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SIX PRIVY COUNCIL JUDGMENTS,

1850–1872.

By the same Author.

HANDY-BOOK OF THE IRISH CHURCH ACT.

THE IRISH CHURCH ACT, 1869, and the GLEBE LOAN ACT (IRELAND) 1870. Annotated. Rules, Forms, and Notes of Decisions by the Commissioners, Resolutions of the Church Representative Body, etc. etc., and an Index. New Edition.

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SIX JUDGMENTS

OF THE

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

IN ECCLESIASTICAL CASES,

1850–1872.

WITH

AN HISTORICAL INTRODUCTION, NOTES, AND INDEX:

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PREFACE.

A FEW of the more important of the ecclesiastical causes heard since the year 1850 before the Judicial Committee of the Privy Council will be found in this volume.

To assist the reader, a full introductory statement has been prepared and prefixed to each Judgment.

The Judgments are printed *verbatim*; that in the case of Sheppard *v.* Bennett has been reprinted from an official copy.

My best thanks are due to Mr. Edmund F. Moore, Q.C., the learned Reporter in the Court of the Judicial Committee, who, courteously waiving his copyright, has permitted me to make unrestricted use of the contents of his valuable Reports.

W. G. BROOKE.

CONTENTS.

PAGE

PREFACE v

INTRODUCTION ix

LIST OF JUDICIAL COMMITTEE xlvii

CASES.

GORHAM *v.* BISHOP OF EXETER 1

LIDDELL *v.* WESTERTON and LIDDELL *v.* BEAL . . 42

WILLIAMS *v.* BISHOP OF SALISBURY and WILSON *v.* FENDALL 81

MARTIN *v.* MACKONOCHIE 103

HEBBERT *v.* PURCHAS 162

SHEPPARD *v.* BENNETT 209

APPENDIX.

PAGE

NOTE A. (Gorham *v.* Bishop of Exeter) . . . 249
NOTE B. (Faulkner *v.* Litchfield) 252
NOTE C. (Parker *v.* Leach) 257
NOTE D. ('Essays and Reviews') 258
NOTE E. (Ritual Commissioners' Report on Incense and Lighted Candles) 260
NOTE F. (Sumner *v.* Wix) 261
NOTE G. (Eucharistic Vestments) 266
NOTE H. (Ritual Commissioners' Report on Vestments) 267
NOTE I. (Legal Opinion on Vestment Question) . 268
NOTE K. (Sheppard *v.* Bennett) 271

INDEX 275

INTRODUCTION.

THE jurisdiction of the Judicial Committee of the Privy Council as a final Court of Appeal in causes ecclesiastical is part of the supremacy of the Crown, from which all jurisdiction, spiritual or temporal, is derived; but the ecclesiastical jurisdiction which flows from the supremacy is merely co-extensive with the temporal jurisdiction: the Crown has no higher power in causes ecclesiastical than in temporal matters.

The legal supremacy of the Queen is defined in the thirty-seventh Article of the Church of England, as follows:—

'The Queen's Majesty hath the chief power in this realm of England, and other her dominions, unto whom the chief government of all estates of this realm, whether they be ecclesiastical or civil, in all causes doth appertain, and is not, nor ought to be, subject to any foreign jurisdiction.

'Where we attribute to the Queen's Majesty the chief government—by which titles we understand the minds of some slanderous folks to be offended—we give not to our Princes the ministering of God's Word, or of the sacraments, the which thing the injunctions also lately set forth by Elizabeth our Queen do most plainly testify; but that only prerogative which we see to have been given always to all godly princes in Holy Scriptures by God Himself; that is, that they should rule all states and degrees committed to their charge by God, whether they be ecclesiastical or

temporal, and restrain with the civil sword the stubborn and evil-doers. The Bishop of Rome hath no jurisdiction in this realm of England.'

The Canons of 1603, passed by Convocation and sanctioned by the King, are equally explicit. By these Canons, which bind the Clergy so far as they are not contrary to the statute and common law of England, it is decreed as follows:—'That all ecclesiastical persons having cure of souls shall, to the uttermost of their wit, teach and declare that all usurped and foreign power is for most just cause taken away and abolished, and that, therefore, no manner of obedience, or subjection, is due to any such foreign power; but that the Queen's power within her realms of England, Scotland, and Ireland, and all other her dominions, is the highest power under God, to whom all men do by God's laws owe most loyalty and obedience before and above all other powers and potentates in the earth.' (*Canon* 1, *abridged.*)

'That whoever shall affirm that the Queen's Majesty hath not the same authority in causes ecclesiastical that the godly Kings had among the Jews, and Christian Emperors of the Primitive Church, or impeach any part of her regal supremacy in the said causes restored to the Crown, and by the law of this realm therein established, let him be excommunicated *ipso facto.*' (*Canon* 2.)

'No person shall be received into the ministry nor admitted to any ecclesiastical function, except he shall first subscribe to this article following:—That the Queen's Majesty, under God, is the only supreme Governor of this realm, and that no foreign prince, person, prelate, state, or potentate hath, or ought to have, any jurisdiction, power, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within her Majesty's said realms and dominions.' (*Canon* 26.)

The legal supremacy of the Queen is also part of the common law. Lord Chief Justice Hale says: 'The supremacy of the Crown of England in matters ecclesiastical is a most indubitable right of the Crown, as appeareth by records of unquestionable truth and authority.' (1 H. H., 75.) Lord Chief Justice Coke says: 'By the ancient laws of this realm this kingdom of England is an absolute empire and monarchy, consisting of one head, which is the King, and of a body, consisting of several members, which the law divideth into two parts—the clergy and the laity—both of them next and immediately under God subject and obedient to the head; also the kingly head of this body politic is instituted and furnished with plenary and entire power to render justice to every member of the body politic in all causes, ecclesiastical and temporal.' (Coke's 'Reports,' Part 5, Cawdrey's case.)

The supremacy of the Crown is also secured by the statute law of the realm. By Act of Parliament, 1 Eliz., c. 1., it is enacted, 'That no foreign prince, prelate, state, or potentate, spiritual or temporal, shall use, enjoy, or exercise any manner of power, jurisdiction, superiority, authority, pre-eminence, or privilege, spiritual or ecclesiastical, within this realm, or any other her Majesty's dominions or countries, but the same shall be abolished thereout for ever; and such jurisdictions, privileges, superiorities, and pre-eminences, spiritual and ecclesiastical, as by any spiritual or ecclesiastical power or authority have heretofore been or may lawfully be exercised for the visitation of the ecclesiastical state or persons, and for reformation, order, and correction of the same, and of all manner of heresies, schisms, abuses, contempts, and enormities shall for ever be united and annexed to the imperial Crown of this realm.'

Commenting on this statute, Sir Edward Coke says that it was not a statute introductory of a new law, but declara-

tory of the old, which appeareth by the title—'An Act restoring to the Crown the ancient jurisdiction over the State, ecclesiastical or spiritual.' For the Act doth not annex any jurisdiction to the Crown but that which in truth was, or of right ought to be, by the ancient laws of the realm, parcel of the King's jurisdiction, and united to his imperial crown, and which lawfully had been, or might be, exercised within the realm.

It is evident, then, as all jurisdiction is resident in the Crown, that the exercise of authority in any Court, spiritual or temporal, is in virtue of a delegated power, and not of inherent right. The Crown, which has conferred the jurisdiction, may also take it away. It may alter the forms under which that delegated jurisdiction is administered; and if it were voluntarily to surrender any part of its ancient prerogative, it would not thereby surrender its right to resume it again if it should so determine.

Before alluding to the statutes which confer jurisdiction on the Judicial Committee of the Privy Council, it may not be uninteresting to review historically the question of the royal supremacy in matters ecclesiastical, in order to see how far any claim to jurisdiction, independent of the Crown, is supported by the ancient laws and customs of the realm.

In the earlier English history we find, as soon as the nation is united under a single rule, a complete identification of the Church and the State. During the period which preceded this union, ecclesiastical synods appear to have been convened by the sole authority of the Primate, and their decrees to have rested for validity and force on the inherent jurisdiction of the Church; but, even in these synods, we find the Sovereign of the various provinces

sitting side by side with the Archbishop, and confirming the acts of his councils. Under the more settled government, however, of the United Kingdom the civil and ecclesiastical assemblies became actually one, and dealt alike with spiritual and temporal affairs, without the least idea that either power obtruded on the proper province of the other. The Bishop sat in the same Court with the Ealdorman. The King, as head of the race, crowned the national fabric. In conjunction with the Witan (or Great Council) he had the power of appointing and deposing Bishops. He was also, with a similar qualification, supreme judge of all causes and persons, and the enforcement of ecclesiastical decrees belonged to the same high prerogative. It should also be observed, as incident to this early period, that under a strong king many of the claims of the Witan to a share in the government of the realm were practically lost: if the King, for instance, were a pious one, the Bishops were chosen by him with reference to the consent of the diocesan Clergy; but if he were a peremptory one, they were appointed by his determined will. But it would appear that in judicial matters the King did not act without a Court, which was in name, as well as reality, a portion of the Witenagemot. It is quite unnecessary more than to refer to the striking similarity between the inter-relation of Church and State as they now exist, and the system of Church government and administration just indicated; and though, with respect to the latter, it would be rash to affirm that the system ever existed in integrity for the four centuries which preceded the Conquest, yet that every portion of it existed at some period during those centuries, and, when it ceased to exist, was superseded by some other arrangement of the same kind, is capable of proof. The general machinery was permanent, and little affected by Frank, Roman, or Celtic

laws or politics.* The union of Church and State dated, in fact, from the very first appearance of the Church in the English realms, and became so blended with the Constitution itself as to have been compared to the mysterious and inseparable connection between the soul and body of an individual man.†

The era of the Conquest was remarkable for the separation of the temporal and ecclesiastical jurisdictions, and the beginning of those especially ecclesiastical tribunals, which, with lessened forces, have survived to our own day. The union of ecclesiastical and temporal affairs, which did prevail, was altogether opposed to the theories of ecclesiastical propriety which were held both by the Conqueror and his Primate, Lanfranc. The laws which were hitherto in force in England were declared by King William and his Witan to be bad and contrary to the Sacred Canons. The ordinance by which the spiritual and temporal Courts were separated runs thus:—'Sciatis vos omnes, et cæteri, mei fideles, qui in Angliâ manent, quod episcopales leges quæ non bene, nec secundum sanctorum canonum præcepta usque ad mea tempora in regno Anglorum fuerunt communi concilio, et consilio Archiepiscoporum meorum, et ceterorum Episcoporum et Abbatum, et omnium principum regni mei emendandas judicavi.'‡ The writ goes on to forbid the Bishops to bring any cause which involved questions of Canon Law, or questions concerning the cure of souls, before the ancient Courts of the Shire and the Hundred. They were to hold Courts of their own, in which alone matters of ecclesiastical concern were to be judged, and in which every man was bound to appear when sum-

* *Vide* Freeman's *Norman Conquest*, vol. i. p. 405. Stubbs' *Documents Illustrative of English History*, pp. 11, 12.

† Hook, *Lives of Archbishops*, vol. iii., Introduction.

‡ Selden's *Eadmer*, p. 167; Stubbs' *Documents, etc.*, p. 81.

moned, no less than in the Court of the civil magistrate. But, notwithstanding this separation of the subordinate lay and ecclesiastical jurisdictions, and the rise of separate customs and separate books of law, the Great Council of the realm, consisting of Bishops, Abbots, and nobles, maintained its ground; and it is to be noted that, as the jurisdiction now assumed by the Bishops' Court was entrusted to them by an Act of the King and Council, it is natural to assume that without authority from that source, as representing the national will, no such Bishops' Court could legally have been established. Nor have we any reason to believe that this great constitutional innovation was the result of any pressure from without, or any demand on the part of the Bishops and Clergy. It was in its pureness a legislative act passed in the interests of convenience and propriety, similar in its nature to the severance, at a later time, of the Courts of Equity and Common Law, or to the threefold division of the Courts under Edward I., but not involving any question of principle; for the severance was effected by, and the new Courts derived their jurisdiction from, the same royal authority, with the advice of the Great Council. Undoubtedly the position of the Conqueror was one of great and unbounded authority. He was supreme governor of the Church throughout his dominions. In all cases and over all persons was that supremacy asserted. The ecclesiastical state was in complete subordination to his will. On that will, we are told by the chronicler Eadmer, all things, Divine and human, were made to depend. He would have no Pope acknowledged within his dominions without his consent, and no Papal letters or bulls were allowed to have any force or currency in the realm, unless they were first seen and approved by himself. When the Archbishop summoned a national council, its decrees had no force until they were confirmed by the King; it might even seem that

no matters were to be debated without the royal licence. Nor would William allow any ecclesiastical censure on his barons or officers of State for any scandalous crime without a Royal Warrant. 'This last,' says Collier (*History*, vol. ii., p. 3), always prone to exaggerate Church authority, 'was a wresting of the keys out of the hands of those our Saviour entrusted them into—seizing the apostolical character, and dissolving the Church into the State. It placed the Christian religion at the mercy of the civil magistrate.' But under William all things indicated a strong line of separation between the ecclesiastical and temporal power. The Archbishop now held his Synod as a body distinct from the great Gemot of the realm. It almost necessarily followed that the King should assert a distinct authority over ecclesiastical matters, in a shape which gave him the aspect of an external, and even a hostile, power. In this sense it was a novelty for the King to control the action of a distinct ecclesiastical body, or distinctly to signify his personal will in ecclesiastical matters. The alleged changes of William were angrily debated from the days of his son onward, but all of them became part and parcel of the law of England. The supremacy established by William was essentially the same as was contended for by Henry II., and finally established by Henry VIII.*

The next great era to which allusion may be made is the reign of Henry II. Under this sovereign the rule of law was initiated. The King restored the machinery of the Exchequer and 'Curia Regis,' which had been instituted by Henry I.,† extended their powers, and brought them into

* Freeman's *Norman Conquest*, vol. iv. pp. 437–9.

† The Justiciar was an officer appointed by the Norman Kings to assist in the business entailed on the King, and at times to take his place. He was Lieutenant-General of the kingdom, and represented

close connection with the provincial organisations of the shires, the hundreds, and the local franchises. Having met with opposition to the carrying out of this policy from the barons, and from the clergy, the former were called upon to agree to the restriction of their hereditary jurisdictions to the smallest compass, and the latter to allow themselves to be, in all matters not purely spiritual, subject to the ordinary process of the law. Hence arose the two great struggles of the reign, which must be regarded together; the Constitutions of Clarendon were but part of a scheme which was to reduce all men to equality before the law. Before, however, referring briefly to those famous ordinances, it may be useful to trace to its source in the Curia Regis the political functions now exercised by the Privy Council, the House of Lords, the Chancellor, and the Courts of Common Law; and for this purpose we must bear in

the King in all matters—regent of the kingdom in his absence—and, whether the King was absent or present, the supreme administrator of law and finance. Under him the King's clerks, or chaplains, were formed into a body of secretaries, the chief of whom bore the title of Chancellor. The Conqueror himself executed in person a great part of the the business of the State; it is under William Rufus that the Justiciar becomes the Prime Minister. The organisation of the Justiciar's administration dates from the reign of Henry I. His staff was selected from the barons or vassals of the Crown, who were more nearly connected with the royal household, or qualified by their knowledge of the law for the position of judges. These were formed into a Supreme Court attendant upon the King—the Curia Regis—which, when employed in finance, sat in the Chamber, and was known by the name of the Exchequer. This staff of officers, which may be regarded as a Judicial Committee representing the whole Court of vassals, was the germ of the whole administrative machinery of the Constitution. By it all appeals were decided, and to it all suits might be called up on application of the suitors. As a royal council it shared in the revision and registration of the laws and charters, which it attests. But in matters of taxation and legislation it had no direct influence: these powers belonged to the King and the Witan—the King and the National Assembly, now composed of his vassals.—Stubbs' *Select Charters*, p. 16.

mind what has been already said (*note*, p. xii) of the constitution of the Curia Regis—or royal Court. Henry, in 1178, restricted the number of those who exercised their functions in the Curia to five, and reserved for his own hearing in full council the causes in which this Court, which until now had been a final Court of Appeal, failed to do justice. This limited tribunal is the lineal predecessor of the existing Courts of Queen's Bench and Common Pleas; the Upper Court of Appeal, the King in his ordinary Council, is the body from which, at later dates, the judicial functions of the Privy Council, and the equitable jurisdiction of the Chancellor, are derived. It is this Council which, when united with the general body of the Baronage in its triennial assemblies, constitutes the Magnum Concilium of the next centuries: and it is from the confusion of powers which resulted from this constant union of the Royal Council with the Court of the Barons, that the House of Lords, the descendant of the latter, borrowed its character as a Court of Appeal, while the Privy Council, as descendant of the former, borrowed a legislative character—carried out in its ordinances—which had at first belonged only to the King in his great Council of the Baronage. The original Tribunal, the King's ordinary Council, retained throughout its undiminished powers, changing at various times, and throwing off new offshoots—such as the Court of the Star Chamber—until it has reached our own time in the form of the Judicial Committee of the Privy Council.

It was in the events which followed the iron rule of William of Normandy—in the gradual deterioration of the liberties to which he was pledged, as the reins of power fell into the hands of smaller men—in the advancing claims to independence on the part of distinct ecclesiastical bodies—in the rise, as the influence of the Italian lawyers increased, of

the mischievous system of Appeals to Rome, which, though they became common in after periods, had never any sanction in the laws of England—in the exaggerated influence of the Canon law, which only a royal prohibition prevented from being openly taught at the University of Oxford, in the reign of Stephen, by the Lombard teacher Vacarius—in the anarchy of the twenty years after the death of Henry I., when all central administration, except the ecclesiastical, collapsed—it was these circumstances that rendered necessary the restrictive action of the Constitutions of Clarendon, which determine and illustrate the next great epoch of our ecclesiastical history. These famous ordinances owe their title to Clarendon, a royal palace near Salisbury. It was to this palace that Henry II., desiring to settle the points in dispute, and to re-affirm the old constitution in Church and State, summoned his Great Council. It was attended by the two archbishops, eleven bishops, between thirty and forty of the highest nobles, with numbers of inferior barons, who subscribed the customs, which had been collected and put in writing by the King's order. These Constitutions aimed at the subjection of the great prelates to the Crown to the same extent as the great barons, and brought the whole of the clergy, equally with the laity, within the common law of the land. By them it was enacted that all clerks accused of any crime were to be summoned before the King's Court. The King's justiciaries were to decide whether it was a case for civil or ecclesiastical jurisdiction, and those which belonged to the latter were to be removed to the Bishop's Court.* Appeals lay from the Archdeacon to

* The exact form in which this ordinance was signed by the Council is thus given:

'Clerici vectati et accusati de quacumque re summoniti a justicia regis venient in curiam ipsius, responsuri ibidem de hoc unde videbitur curiæ regis quod ibidem sit respondendum; et in curia ecclesiastica unde

the Bishop, from the Bishop to the Archbishop; and on failure of justice by the Archbishop, in the last resort to the King, who by order was to take care that justice was done in the Archbishop's Court, and no further appeal was to be made without the King's consent.* In thus establishing the relations of Church and State, and re-asserting the supremacy of the Crown, Henry but re-affirmed that the old law of England, which claimed for Edward the Confessor the title of the Vicar of the Highest King, a law which was afterwards perpetuated in the statutes of Henry VIII. and Elizabeth. There is no reason to believe that in carrying out these reforms the King was actuated by any motives of hostility to the clergy, or even by a desire to increase the royal power; the abuses against which they were aimed were glaring, and the principles by which they were to be carried out have been stamped from time to time with the approval of the whole people. These famous Constitutions, his signature to which sat so heavy on the heart of Becket, the King, on his reconciliation with the Church, promised to repeal; but no Act appears whereby that repeal was ever effected.†

The Constitutions of Clarendon produced effect, and in the reign of Henry III. more unrestricted and successful efforts began to be made to maintain the independence of

videbitur quod ibidem sit respondendum; ita quod justitia regis mittet in curiam sanctæ ecclesiæ ad videndum qua ratione res ibi tractabitur. Et si clericus "convictus vel confessus fuerit, non debet de cetero eum ecclesia tueri." '—Stubbs' *Select Charters*, p. 132.

* The text is as follows:—' De appellationibus, si emerserint, ab archidiacono debent procedere ad episcopum, ab episcopo ad archiepiscopum. Et si archiepiscopus defecerit in justitia exhibenda ad dominum regem perveniendum est postremo, ut præcepto ipsius in curia archiepiscopi controversia terminetur, ita quod non debet ulterius procedere absque assensu domini regis.'—Stubbs' *Select Charters*, p. 133.

† Collier, without any authority, says they were repealed in a Parliament of Richard I.

temporal government. The judges of the King's Court had, until that time, been principally ecclesiastics, and consequently tender of spiritual privileges. But now, abstaining from the exercise of temporal jurisdiction, the clergy gave place to common lawyers, professors of a system very discordant from their own. These soon began to assert the supremacy of their jurisdiction by issuing writs of prohibition, whenever ecclesiastical tribunals passed the limits which approved use had established. Little accustomed to such control, the hierarchy chafed under the bit; provincial synods protested against the pretensions of laymen to judge the anointed Ministers whom they were bound to obey: in defiance of the Constitutions, the cognisance of rights of contract and of patronage was boldly asserted by the Church; but, firm and cautious, favoured by the nobility, the judges receded not a step, and ultimately fixed a barrier which the Church was forced to respect. In the reign of Edward I. an Archbishop acknowledged the abstract right of the King's Bench to issue prohibitions; and the statute entitled 'Circumspectè Agatis,' in the thirteenth year of that prince, while by its mode of expression it seems designed to guarantee the actual privileges of spiritual jurisdiction, had a tendency, especially with the disposition of the judges, to preclude the assertion of some which are not therein mentioned. Neither the right of advowson, nor any temporal contract, is specified in this Act as pertaining to the Church, and accordingly the temporal Courts have ever since maintained an undisputed jurisdiction over them.* There was also a slow, persevering determination to bring clerks accused of civil offences under the judgment of the King's Court, thus infringing the claim of the Church to sole cognisance over the clergy. It was enacted by the Statute of Westminster,

* Hallam, *Mid. Ages*, c. vii. part ii.

in 1275, or rather a construction was put on that Act, which is rather obscurely worded, that clerks indicted for felony might be arraigned in the King's Court, and not delivered to their Ordinary, until an inquest had been taken of the matter of accusation, or that the whole estate of the felon clerk, real and personal, might be seized. The Ordinary thus became either the mere executioner of a sentence passed by the Civil Court, or became obnoxious to the charge of protecting, or unjustly acquitting, a convicted felon. Where the property was thus boldly escheated, the reverence for the person of 'the anointed of the Lord'—a doctrine enshrined in the decretals as an eternal, irreparable axiom—rapidly lost its hold over the popular imagination.*

The next great epoch in the ecclesiastical history of England is found in the reign of the third Edward. For many years, from the enactment of the Constitutions of Clarendon, the English people carried on a struggle, with varying fortune, against the encroachments of the spiritual power. The struggle assumed two distinct forms, which may be easily distinguished as the struggle between the jurisdiction of the ecclesiastical and lay tribunals, and the struggle between the King's supremacy and the rising assumptions of the See of Rome. In the one case the restraint of the ecclesiastical power belonged to the King's Courts; in the other to the King in Council, or to the King and his Parliament. On the one hand the ancient laws of the realm interpreted by the Judges kept the ecclesiastical Courts from transgressing their constitutional limits, while on the other the free Parliament of England, acting as a contemporaneous exposition of public opinion, successfully asserted the liberties of the kingdom against the tyranny

* Milman, *Lat. Christ.*, book xi. c. vii.

of a foreign prelate. This great struggle, growing in intensity with the growth of Roman power on the Continent, was stamped from time to time by the reigning sovereign with his own essential strength or weakness. But where the monarch was feeble there was a strength in the House of Commons which came in aid of the wavering policy of the Court, and a love of liberty in the nation itself; so that no King of England, however fearlessly he bore himself in the assertion of his royal supremacy over his own dominions, ever failed to win and carry with him the support of his own people.

The dispute between the Crown and the See of Rome principally turned on the right of presentation to English benefices.* 'For the hundred and fifty years which succeeded the Conquest the right of nominating the archbishops, the bishops, and the mitred abbots had been claimed and exercised by the Crown. On the passing of the Great Charter the Church had recovered its liberties, and the privilege of free election had been conceded by a special clause to the clergy.' The practice which then was established was in accordance with the general spirit of the English Constitution. On the vacancy of a see, the cathedral chapter applied to the Crown for a *congé d'élire*. The application was a form; the consent was invariable. A Bishop was then elected by a majority of suffrages; his name was submitted to the Metropolitan, and by him to the Pope. If the Pope signified his approval, the election was complete; consecration followed, and the Bishop, having been furnished with his bulls of investiture, was presented to the King, and from him received the temporalities of his see. The mode in which the great Abbots were chosen was

* For the relation of the history of this period I am chiefly indebted to Mr. Froude (*Hist.*, vol. ii. pp. 2–12), who has traced it with his usual clearness and precision.

precisely similar, the superiors of the different orders being the channels of communication with the Pope in the place of the Archbishops. The smaller Church benefices, the small monasteries, were in the hands of private patrons, lay and ecclesiastical; but in the case of each institution a reference was admitted, or was supposed to be admitted, to the Court of Rome.'

'There was thus in the Pope's hand an authority of an indefinite kind, which it was presumed his sacred office would forbid him to abuse, but which he might abuse at his discretion. He had absolute power over every nomination to an English benefice; he might refuse his consent till adequate reasons, material or spiritual, had been submitted to his consideration. In the case of nominations to the religious houses, the superiors of the various orders residing abroad had equal facilities for obstructiveness, which they did not fail to turn to good and profitable account.'

To provide against the abuses of superiors residing abroad, and laying taxes on the English houses, and against the pernicious system of first fruits, the 35 Edw. I. (Statutes of Carlisle, 1306–7) enacted that no religious persons should, under any pretence, send out of the kingdom any kind of rent, tax, or tallage; and that 'priors aliens' should not presume to assess any payment, charge, or burden whatever upon houses within the realm.

'The language of this Act was guarded. The specific methods by which the extortion was practised were not explained, the tax on benefices not yet having distinguished itself beyond other impositions, or the Government trusting that a measure of a general kind would answer the desired end. The disease, however, was too severe to yield to gentle entreaties or mild measures. Fifty years afterwards it became necessary to re-enact the same statute, and to point out more specifically the intention with which it was passed.'

'The Popes, in the interval, had absorbed in their turn from the heads of the religious orders the privileges which by them had been extorted from the religious societies. Each English benefice had become the fountain of a rivulet which flowed into the Roman Exchequer, or a property to be distributed as the private patronage of the Roman Bishop.'

'The Pope,' says the Statute of Provisors (25 Edw. III. s. 4), 'accroaching to himself the seignories of benefices within the realm of England, doth grant the same to aliens which did never dwell in England, and to cardinals which might not dwell here, as if he had been patron of the said benefices, as he was not of right by the law of England, whereby many inconveniences have ensued. Not regarding the statute of Edward I., he had also continued to present to bishoprics, abbeys, priories, and other valuable preferments, and it was necessary to insist emphatically that the Papal nominations should cease. They were made in violation of the law, and were conducted with simony so flagrant that English benefices were sold in the Papal Courts to any person who would pay for them, whether an Englishman or a stranger. It was therefore decreed that the elections to bishoprics should be free as in time past, that the rights of patrons should be preserved, and penalties of imprisonment, forfeiture, or outlawry should be attached to all impetration of benefices from Rome by purchase or otherwise.'

The mischievous system of appeals to Rome being still kept up, and questions depending on the Statute of Provisors being taken before the tribunals of that Court, the first Statute of Premunire (27 Edw. III. c. 1, 1353) was passed.

The preamble of that Act sets forth that grievous complaints were made that divers of the people were drawn out of the realm to answer of things whereof the cognisance pertains

to the King's Court, and also that the judgments given in the same Court were impeached in another Court in prejudice and disherison of the King and to the undoing of the common law. It was therefore enacted by the enacting part of the Statute that all people of the King's ligeance which shall draw any out of the realm in plea whereof the cognisance pertains to the King's Court, or of things whereof judgments are given in the King's Court, or which did sue in any other Court to defeat the judgments of the King's Court, should be put out of the King's protection and their lands and goods forfeit to the King, and their bodies, wheresoever they should be found, should be taken, imprisoned, and ransomed at the King's will.

'These Acts, stringent though they were, were insufficient to meet and overthrow the danger. The influence of the Popes was not so easily defeated. The law was still defied and evaded, and the struggle continued till the close of the century, the Legislature labouring patiently but ineffectually to confine with fresh enactments their ingenious adversary.' *

'At length symptoms appeared of an intention on the part of the Popes to maintain their claims with spiritual censures. Whereupon the Lords (the Bishops and Abbots protesting) with the Commons passed a fresh statute more emphatically stringent, re-affirming the 25 Edw. III., and enacting 'that if any man brought into this realm any sentence, summons, or excommunication, contrary to the effect of this statute, he should incur pain of life and members, with forfeiture of goods; and if any prelate made execution of such sentence, his temporalities should be taken from him, and abide in the King's hands until redress was made.' †

* 38 Edw. III. stat. 2; 3 Rich. II. cap. 3; 12 Rich. II. c. 15.
† 13 Rich. II. c. 2.

The struggle now assumed a serious aspect. The Great Council of the realm forwarded an address to Rome praying for some arrangement. Boniface IX., disbelieving the danger, asserted his usurped right, and boldly granted a prebendal stall in Wells to an Italian Cardinal to which a presentation had already been made by the King. A decision was given in England in favour of the nominee of the King, and the Bishops agreeing to support the Crown were excommunicated. Parliament happened to be sitting at the time. It took the matter up warmly. The House of Commons drew up, in the form of a petition to the King, a declaration of the circumstances which had occurred. After having stated generally the English law on the presentation to benefices, 'Now of late,' they added, 'divers processes be made by the Pope, and censures of excommunication upon certain Bishops, because they have made execution of the judgments (given in the King's Courts), to the open disherison of the Crown; whereby, if remedy be not provided, the Crown of England, which hath been so free at all times that it has been in subjection to no realm, but immediately subject to God, and no other, and that the same ought not in anything touching the regality be submitted to the Bishop of Rome, nor the laws of this realm by him frustrated and defeated at his will to the perpetual destruction of the King and his sovereignty. The Commons, therefore, on their part, affirmed that the things so attempted by the Bishop of Rome were clearly against the King's Crown, and that they would stand with the King in all cases attempted against his Crown in all points, to live or to die.' After this emphatic assertion of their own opinion they prayed the King to examine all the Lords, as well spiritual as temporal, how they thought of the cases which were so openly against the King's Crown. The enquiry was made and the answer was satisfactory.

The Lords Temporal did answer that the cases were clearly in derogation of the King's Crown, and that they would stand with the same Crown 'with all their power.' The Lords Spiritual gave a more cautious but no less manly reply. They would not deny nor affirm that the Bishop of Rome might not excommunicate or translate Bishops, yet that if any translations were made of any prelates, which prelates were profitable or necessary to the King, or that his sage men without his consent were withdrawn out of his realm, they unhesitatingly declared that the same was against the King and his Crown, and that they would and ought to stand with the King in maintaining his Crown, as they were bound by their allegiance; wherefore the King, by the assent aforesaid and at the prayer of the Commons, did order that whoever drew out of the country a plea which belonged to the King's Court should be outlawed; or, to quote the words of the statute of Richard II., 'That if any purchase, pursue, or cause to be purchased or pursued in the Court of Rome or *elsewhere*, any such translations, processes, or sentences of excommunication, bulls, instruments, or any other thing whatsoever, which touch the King, against him, his crown, his regalty, or his realm, as is aforesaid; and they which bring within the realm, and them receive; that they, their notaries, procurators, maintainers, abettors, fautors, and counsellors shall be put out of the King's protection, and their lands and tenements, goods and chattels forfeit to the King; and that they be attached by their bodies, or that process be made against them by "premunire facias" in manner as ordained in other Statutes of Provisors, and other which do sue in any other Court in derogation of the royalty of our Lord the King.' (16 Rich. II., 1392–3.)

Sir Edward Coke observes on this statute that it is more strict and comprehensive than 27 Edward III. c. 1, and

that by its provisions all applications to a foreign jurisdiction, either in the Court of Rome or '*elsewhere*,' to the prejudice of the King's crown and regalty, falls within the penalty of the statute. In interpreting the word 'elsewhere,' he stretches it so as to include the Ecclesiastical Courts of the realm, and he adduces several precedents to support this construction. There is, indeed, no doubt that subsequently to this statute ecclesiastical jurisdiction was kept in better control than formerly by the judges of the Common Law, who extended the penalties of premunire to the spiritual Courts when they transgressed their limits. (3 *Inst.*, p. 121.) It was to no purpose that the Bishops complained of the strained construction of the word 'elsewhere,' which they alleged was put into the Bill because the Pope was sometimes absent from Rome, and demanded to be checked by prohibition if they exceeded the bounds of their jurisdiction, and not be held liable to the same penalties as the Pope's provisors. To their complaints that they were forced to abide by the opinions of the lay judges, who seemed inclinable to act by such measures as would perfectly ruin the ecclesiastical jurisdiction, and make it despicable and insignificant—to their address, praying that the word 'elsewhere,' which gave occasion to the misconstruction, should be explained by authority of Parliament, no answer was returned.

The resolute attitude of the country, the unyielding tone assumed by the Parliament, and the independent action of the lay tribunals in interpreting the laws of England, acquired strength daily, notwithstanding the fulminations of the Roman Pontiff. Long before the Reformation the excommunications of the Pope were of no legal validity within the realm. In the reign of Edward III. it was held by the judges that an excommunication of an Archbishop, albeit it be disannulled by the Pope, is to be allowed

neither ought the judges to give any allowance of any such sentence of the Pope or his legate.—Further, it was held that the King may not only exempt any ecclesiastical person from the jurisdiction of the Ordinary, but may grant unto him episcopal jurisdiction. As thus it appeareth the King hath done of ancient time to the Archdeacon of Richmond.—Further, in an attachment upon a prohibition, the defendant pleaded the Pope's Bull of excommunication of the Plaintiff. The Judges demanded of the Defendant if he had not the certificate of some Bishop within the realm, testifying the excommunication, to which answer was made that such was not necessary, for the Pope's bulls were notorious enough; but it was adjudged that they were not sufficient, for that the Court ought not to have regard to any excommunication out of the realm, and therefore by the rule of the Court the Plaintiff was not thereby disabled.—In the reign of Richard II. in an action against an incumbent of a church in England, another sued a provision in the Court of Rome, and there pursued until he recovered the church against the Incumbent, and after brought an action of account against him, as receiver of oblations and offerings. The whole Court was of opinion against the Plaintiff, and non-suited him.—In the reign of Henry IV. it was held by the Judges that excommunication made by the Pope is of no force in England, and the same being certified by the Pope unto any Court in England, ought not to be allowed; neither is any certificate of any excommunication available in law, but that which is made by some Bishop in England, for the Bishops are, by the Common Law, the immediate officers and ministers of justice.—In the reigns of Edward IV. and Richard III. it was held and confirmed that the Pope's excommunication is of no force within the realm of England, nor does it prejudice any man in England at the Common Law. And many other cases to the same effect.

Such is a slight historical review of the doctrine of the Royal Supremacy in pre-Reformation times, illustrated by the statutes of the realm, and by the administration of justice in the King's Court. A careful consideration of what has been noted will, it is believed, go far to overthrow the idea that the Royal Supremacy in ecclesiastical matters was first asserted and established by Henry VIII., or that its exercise was commended to the English people by any personal exigencies of that monarch. The principles which nourished and sustained the Royal Supremacy were firmly planted in the roots of the English Constitution, which, itself slowly built up, was but a reflex of the character and genius of the people. From the earliest times a determined stand was made against the usurpations of Rome, and the encroachments of the spiritual power. Though the Pope was permitted to do certain things within the realm, it was by usurpation, and not as of right. His claims to govern in ecclesiastical matters had no sanction in the laws or customs of England. The ecclesiastical power, in its extravagant assumptions, had placed inself in hostility to the spirit of national and individual liberty, and it went down in the struggle for ascendancy. In the Kings of England, as representing the nation, in the Parliament, in the halls of justice, the feelings of opposition to a foreign yoke found adequate expression. The King stood with his people, and the people, peers and commoners, stood with their King, and defied the whole strength of the Papal power. The spirit of liberty gathering strength as the ages went by, was stifled by no terrors of this world, nor the more awful denunciations of the world to come. The laws of Edward the Confessor, the Norman Constitution of the Conqueror, the Constitutions of Clarendon, the great Statutes of Provisors and Premunire, spoke in unmistakeable terms of the strong determination of the English people that they would tolerate no foreign

or ecclesiastical tyranny; so that, to use the words of Dean Milman, England had long ceased in the reign of Henry VI. to be the richest and most obedient tributary of Rome. Peers and Commons had united in the same jealousy of the exorbitant power and influence of the Pope, whose remonstrances against the laws of England had broken and scattered like foam upon the rocks of English pride and English justice.

Reviewing the historical position of the question of the Papal Supremacy as it existed before the passing of Henry VIII.'s famous Act of Appeal, Mr. Froude says:

'The authority of the Church over the State, the supreme kingship of Christ, and consequently of him who was held to be Christ's vicar above all worldly sovereignties, was an established reality of mediæval Europe. The princes had with difficulty preserved their jurisdiction in matters purely secular; while in matters spiritual, and in that vast section of human affairs in which the spiritual and the secular glide into one another, they had been compelled—all such of them as lay within the pale of the Roman Communion—to acknowledge a power superior to their own. To the Popes was the ultimate appeal in all causes of which the spiritual Courts had cognisance. Their jurisdiction had been extended by an unwavering pursuit of a single policy, and their constancy in the twelfth century was rewarded by absolute victory. In England, however, the field was no sooner won than it was again disputed, and the civil government gave way at last only when the danger seemed to have ceased. While the Pope was dangerous he was dreaded and opposed; when age had withered his arm the English Kings consented to withdraw their watchfulness, and his supremacy was silently allowed as an innocent superstition. It existed as some other institutions exist at

the present day, with a merely nominal authority; with a tacit understanding that the power which it was permitted to retain should be exerted only in conformity with the national will.' (Hist. vol. i. p. 428, 2nd edit.)

The final rupture was precipitated by the Pope's denial of justice to Henry VIII. in the matter of the King's divorce, but the causes which controlled the movement were more imperious than the will or convenience of a king. Sooner or later the separation must have occurred, for the questions involved in the struggle touched not the King only, but the rights and liberties of the whole people. How deep the feeling was against the Papal assumptions is witnessed by the memorable language of the Act of Appeal (24 Hen. VIII. c. 12).

The preamble of that Act, which was an Act declaratory of the law which the Parliament was vindicating against illegal encroachment, says:

'Whereas by divers sundry old authentic histories and chronicles it is manifestly declared and expressed that this realm of England is an empire, and so hath been accepted in the world; governed by one supreme head and King, having the dignity and royal estate of the imperial crown of the same; unto whom a body politic, compact of all sorts and degrees of people, divided in terms by names of spiritualty and temporalty, be bound and ought to bear, next to God, a natural and humble obedience; he being also institute and furnished by the goodness and sufferance of Almighty God with plenary, whole, and entire power, pre-eminence and authority, prerogative and jurisdiction, to render and yield justice and final determination to all manner of folk resident or subject within this his realm, without restraint or provocation to any foreign prince or potentate of the world.' The preamble then affirms that of this body politic the spiritualty is self-sufficient in causes

spiritual, and the temporalty in causes temporal, and then continues, 'And whereas the King's most noble progenitors, and the nobility and commons of this said realm, at divers and sundry Parliaments, as well in the time of King Edward I., Edward III., Richard II., Henry IV., and other noble Kings of this realm, made sundry ordinances for the conservation of the prerogatives, liberties, and pre-eminences of the imperial crown of this realm, and of the jurisdiction spiritual and temporal of the same, to keep it from the annoyance as well of the See of Rome as from the authority of other foreign potentates attempting the diminution or violation thereof, and notwithstanding the said good statutes, divers inconveniences not provided for plainly by the said statutes have risen and sprung by reason of appeals sued out of this realm to the See of Rome in causes testamentary, causes of matrimony and divorce, rights of tithes, oblations, and obventions,' occasioning great inquietation, trouble, delay, and expense to the King's subjects, it was enacted that all such suits should be adjudged by the spiritual and temporal Courts within the realm, without regard to any process of foreign jurisdiction, or any inhibition, excommunication, or interdict. It is further ordained that persons procuring prohibitions, appeals, etc., from the Court of Rome, as well as their fautors, counsellors, etc., all and every of them shall incur the penalties of premunire. Appeals in the causes already specified were to be made wholly within the realm; namely, from the Archdeacon to the Bishops' Court, from the Bishops' Court to that of the Archbishop, and no further. It was further enacted that appeals in any of the aforesaid causes which touched the King should be made to the Upper House of Convocation.

It is important to bear in mind that this Act has no reference to any cause or matter not strictly within those specified therein; namely, causes testamentary, causes of matri-

mony and divorce, rights of tithes, oblations, and obventions. Its legal effect was to abolish appeals to Rome in such causes, and to send such appeals for final determination before the spiritual Courts within the realm, except where such suits touched the King, in which case the ultimate appeal was to the Upper House of Convocation. The Act was passed when Sir Thomas More, a rigid Roman Catholic, was Lord Chancellor, and when the King had not yet broken with the See of Rome. It still allowed an appeal to the Pope in spiritual suits. It was framed upon the principle that while all temporal matters which were discussed in the Ecclesiastical Courts should be finally determined by Courts sitting within the realm, the spiritual jurisdiction, involving questions of doctrine, and which was claimed by the Pope as Head of the Western Church, should remain unaffected. This last remnant of Roman interference was, however, swept away by an Act of the following year (25 Hen. VIII. c. 19), entitled 'An Act for Submission of the Clergy to the King's Majesty.' It enacted that all manner of appeals, of what nature or condition soever they be, shall be made and had by the parties grieved, after such manner as is limited by the former Act of Parliament. No exception was introduced as to causes which touched the King; on the contrary, the enactment was expressly extended to all causes, of whatever nature they were, and whatever matter they concerned; and one further degree in appeals for all manner of causes was given; namely, from the Archbishop's Court to the King in his Chancery, where a commission was to be awarded for the determination of the appeal, and thence no further.

The result of this Act was—1. To abolish appeals to Rome in matters relating to doctrine. 2. To abolish appeals to the Upper House of Convocation in matrimonial and other suits which touched the King. 3. To create a

Court, under the seal of the King sitting in Chancery, called afterwards the Court of High Commission, or High Court of Delegates, for the determination definitively of all appeals in causes pertaining to the spiritualty. By the statute the judgment of the Delegates was to be good and effectual, and also *definitive*, and no further appeals were to be had. But the King in Council after such definitive sentence was not precluded from granting a special Commission of Review, and such Commissions on petition by the defeated party to the King in Council were granted to revise, review, and rehear the cause. Subsequently by statute 2 & 3 Wm. IV. c. 92, the powers of the Court of Delegates were transferred to the King in Council. And it was enacted that every judgment, order, and decree pronounced by that tribunal was to be final and definitive, and no Commission was thereafter to be granted or authorised to review any such judgment or decree. And by statute 3 & 4 Wm. IV. c. 41, the Crown was empowered to remit the hearing of ecclesiastical appeals to the Judicial Committee of the Privy Council, who were to report their opinion thereon to the King in Council.

The result of these Acts was—1. To substitute the Judicial Committee of the Privy Council for the High Court of Delegates. 2. To grant to the Judicial Committee all the powers, authorities, and jurisdiction which the High Court of Delegates had on appeals before them in ecclesiastical causes. 3. To abolish the granting of a Commission of Review after sentence by the Judicial Committee, such sentence being held to be absolutely final, so that no further proceedings either in the nature of review or of a rehearing might be had.

Such is a brief account of the growth and historical derivation of the present Appellate Tribunal in matters ecclesiastical. To connect the survey with our starting-

point in the Elizabethan Act of Supremacy, mention should be made of an Act of the following session, 26 Henry VIII. c. 1. This Act, known as King Henry's Act of Supremacy, has now no place on the Statute Book. It was repealed by 1 & 2 Philip and Mary, c. 8, and the repeal was confirmed by 1 Elizabeth, c. 1, already quoted, and which is the Act now in existence, declaratory of the supremacy of the Crown of England in ecclesiastical and spiritual matters. By the Act the sanction of the Legislature was given to the title which declared the King supreme Head of the Church of England. This title implied that the spiritual body were no longer to be an *imperium in imperio*, but should hold their powers subordinate to the Crown. It asserted an independence of foreign jurisdiction; it was the complement of the Act of Appeals, rounding off into completeness the constitution in Church and State of the English nation. Commenting on this Act, Mr. Froude says that 'considerable sarcasm has been levelled at the assumption by Henry of this title, and on the accession of Elizabeth the Crown, while reclaiming the authority, thought it prudent to retire from the designation. Yet it answered a purpose in marking the nature of the revolution, and the emphasis of the panic carried home the change into the mind of the country. It was the epitome of all the measures which had been passed against the encroachments of the spiritual powers within and without the realm; it was at once the symbol of the independence of England, and the declaration that thenceforth the civil magistrate was supreme within the English dominions over Church as well as State.' (Hist. vol. ii. p. 324, 2nd edit.)

High Court of Delegates.

The question of the composition of the Court of Delegates under 25 Henry VIII. c. 19, is a matter of some importance, because it has been roundly and loosely asserted by Dr. Pusey that up to 1604 the Court was a purely spiritual Court, and that up to 1639 the name of a civil judge is found only in one Commission out of forty.*

But how are the facts? Mr. Fremantle has collected all the information on the point from the authentic records of the Court, and has completely demolished Dr. Pusey's mistranslation of Bishop Gibson's statement.† It is not true that for the first seventy years none but Bishops sat in any

* 'Even in the Court of Delegates, for seventy years, none but Bishops sat in any spiritual cause; and until 1639 the name of any civil judge is found only in one Commission out of forty.'—Speech by Dr. Pusey at Bristol Church Congress, 1864.

'A prescription of seventy years from its institution, during which, all through the reigns of Henry VIII., Edward VI., and Elizabeth, no civil judge—none but Bishops—sat in it (the Court of Delegates), may show what it was at first intended to be. A partial, gradual, and as yet unexplained declension took place under the first Stuarts, in which, however, till 1639, "*the name of any civil judge* is found only in one Commission out of forty." From thence (*i.e.*, from the downfall of Bishops, and their jurisdiction which ensued) we may trace the present rule of mixtures in that Court.' (*On the Royal Supremacy*, by E. B. Pusey, D.D., p. 202. J. & H. Parker. 1850.) In support of this statement, Dr. Pusey gives as a reference Gibson's *Codex*, Introd., p. xxi., but on turning to that work no such statement is found as is placed by Dr. Pusey in inverted commas in his text. The passage in Bishop Gibson runs thus:—'There are no footsteps of any of the *nobility, or Common Law judges*, in Commission till the year 1604 (*i.e.*, for seventy years after the erecting of the Court); nor from 1604 are *they* found in above one Commission in forty, till the year 1639; from whence (*i.e.*, from the downfall of Bishops and their jurisdiction which ensued) we may date the present *rule* of mixtures in that Court.'—Gibson's *Codex*, Introd., p. xxi.

† See Mr. Fremantle's learned Introduction to Brodrick and Fremantle's *Ecc. Judgments of the Privy Council*, to which I am indebted for the following figures. London: J. Murray, 1865.

spiritual cause. The weight of evidence points to a directly opposite conclusion. It is equally untrue that until 1639 the name of any civil judge is found in one Commission only out of forty.

The Repertory Books, which begin in the year 1619, and were regularly kept for seventy years, contain full and accurate information on the subject of appeals before the Delegates, including the names of the Delegates appointed to serve on each Commission. An examination of these books establishes the fact that between 1619 and 1639 1,080 appeals in causes ecclesiastical were brought before the Court of the Delegates. Out of this number in 982 cases the tribunal was composed exclusively of laymen. In two cases only the Court was composed of Bishops exclusively, while in the remaining 96 the Court was a mixed tribunal of lay and ecclesiastical judges. From 1660—the period of the Restoration—to 1703 the Common Law judges sat in two out of three of the ecclesiastical appeals, and thereafter were never absent from the Commissions. They were the essential elements in the constitution of the Court, while the Bishops gradually disappeared. From the Restoration to 1700 the Bishops appear in one Commission out of five. The last record of a Bishop's name appearing on a Commission belongs to the year 1798. The conclusions to which Mr. Fremantle's researches conducted him are thus stated :—'In the Court of Delegates, besides the civilians, who were in all but one or two Commissions, there were, during the first seventy years of its existence, sometimes probably ecclesiastics, sometimes Common Law judges; in the time of James I. and Charles I. Bishops were occasionally added, but more often Common Law judges; for the first fifty years after the Restoration, there were most usually Common Law judges in the Commissions, and often Bishops; but gradually the Bishops were with-

drawn, while the judges became an integral part of the Court.'

Judicial Committee of the Privy Council.

The Judicial Committee of the Privy Council is constituted a Court of Final Appeal in causes ecclesiastical under the provisions of 2 & 3 Wm. IV. c. 92, and 3 & 4 Wm. IV. c. 41, and 3 & 4 Vict. c. 86.

By statute 2 & 3 Wm. IV. c. 92, the High Court of Delegates was abolished, and the 'King in Council' was to exercise all the powers of the Court of Delegates, and every order and decree pronounced by that tribunal was to be final, and no Commission was thereafter to be granted to review any such order or decree. By statute 3 & 4 Wm. IV. c. 41, the Crown was empowered to remit the hearing of ecclesiastical appeals to the Judicial Committee of the Privy Council, who were to report their opinion thereon to the King in Council.*

* Section 1 enacts that the Judicial Committee shall consist of the following high personages:—The Lord President of the Council, the Lord Chancellor of England, Lord Keeper of the Seal, Lord Chief Justice, or Judge, of the Queen's Bench, the Master of the Rolls, Vice-Chancellor of England, Lord Chief Justice, or Judge, of the Common Pleas, Lord Chief Baron, or Baron, of the Exchequer, Judge of the Prerogative Court of the Archbishop of Canterbury, Judge of the Court of Admiralty, Chief Judge in Bankruptcy, being Privy Councillors, and all persons who shall have held such offices or any of them, being Privy Councillors, with power to appoint any two other persons, being Privy Councillors, members of the Committee.

By statute 14 & 15 Vict. c. 83 (1851), the Lords Justices of Appeal in Chancery, being Privy Councillors, were made members of the Judicial Committee.

By statute 34 & 35 Vict. c. 91 (1871), there were added to the Committee four additional paid members, selected from among the judges of the superior Courts of Common Law and Equity, inclusive of the Courts of Probate and Divorce and the Court of Admiralty; and from among such persons as had filled the office of Chief Judge of the High Courts of Fort William, Madras, or Bombay, or of the late Supreme Court of Fort William.

It was further provided (sec. 5) that four members of the Committee should constitute a quorum, that the reports should express the opinion of the majority, and power was given to the Crown to summon other members of the Privy Council to attend the meetings of the Committee—a provision which was acted on in the cases of Mr. Gorham and Mr. Liddell. Provision was also made for the examination of witnesses, and to compel their attendance, and for the trial of issues of fact in the Common Law Courts. The Judicial Committee remained as thus constituted until the year 1840, when the Church Discipline Act (3 & 4 Vict. c. 86) placed on the Committee for the hearing of appeals under that Act all Archbishops and Bishops, being Privy Councillors, with the further direction that no appeal in a suit under that Act should be heard without the presence of one such Archbishop or Bishop.

Finally, by statute 13 & 14 Vict. c. 83, the number of members of the Judicial Committee necessary to form a quorum was fixed at three, exclusive of the Lord President.

In the Church of *England* there are, therefore, two final Courts of Appeal:—

1. The Judicial Committee, with the Archbishops of Canterbury and York and the Bishop of London, as members (in their capacity as Privy Councillors) for hearing appeals under the Church Discipline Act.

2. The Judicial Committee, without any Bishop or Ecclesiastic, for hearing appeals on *duplex querela*, &c.

Ecclesiastical and doctrinal questions may also be raised in the Court of Queen's Bench by *quare impedit*, *mandamus*, or prohibition. The final appeal in questions raised before this tribunal is to the House of Lords, which may be styled a third Court of Final Appeal in ecclesiastical matters.

The abolition of the High Court of Delegates, and the sub-

stitution in its room of the Privy Council, by the Acts of William IV. was based on the report of a Royal Commission appointed in 1830 to enquire into the course of proceeding and jurisdiction of the ecclesiastical Courts with a view to an amendment in the law.* At the instance of the Lord Chancellor (Lord Brougham), the Commissioners drew up a special report on the transfer of jurisdiction to the Privy Council. They recommended—

1. That the jurisdiction hitherto exercised by judges delegate should be abolished.

2. That the right of hearing appeals should be transferred to the Privy Council.

3. That the Commission of Review should be abolished.

The Commissioners based their proposals for a transfer of the jurisdiction to a permanent tribunal, with powers of final adjudication on the anomalies and defects, which they pointed out as existing in the constitution and procedure of the Court of Delegates. These may be briefly given as follows:—

(*a.*) The expense and delay of a separate Commission being required in each case.

(*b.*) The practice of nominating advocates, of small experience, as civilian condelegates; the more experienced advocates being for the most part professionally engaged in the case.

(*c.*) The practice of issuing a Commission of Adjuncts, in case of an equal division of opinion, or no Common Law judge forming part of the majority; and the practice of

* The Commission was addressed to the following persons:—The Archbishop of Canterbury (Dr. Howley); the Bishops of London (Blomfield), Durham (Van Mildert), Lincoln (Kaye), St. Asaph (Carey), and Bangor (Bethell); Lords Tenterden, C.J., and Wynford; Sir N. Tindal, C.J. Com. Pleas; Sir W. Alexander, C.B. of the Exchequer; Sir T. Nicholl, Dean of the Arches; Sir C. Robinson, King's Advocate; Sir H. James; Sir C. E. Carrington; Dr. Lushington; and Mr. Fergusson.

issuing Commissions of Review—leading to delay, expense and inconvenience.

(*d.*) The difficulty of establishing settled principles, or ensuring uniformity of decision in a Court of fluctuating constitution.

It cannot be doubted that a sufficient case was made for the transfer of jurisdiction to the Privy Council. A body composed of Lords Spiritual and Temporal, the Judges in Equity, and of the Common Law, and other persons of legal education and habits, who have filled judicial situations, seemed a most perfect tribunal for the trial of ecclesiastical appeals. Accordingly the Acts, revesting in the Crown in Council, one of its most ancient prerogatives, and supported by the whole bench of Bishops, passed the House of Lords without any opposition. No objection was raised on the ground that appeals involving matters of doctrine would be dealt with by the new tribunal. It has been said that questions of this kind were lost sight of amid the variety of causes, testamentary and the like, that came before the Court. But it can hardly be true that Archbishop Howley and five of the most eminent Bishops on the Bench, who were members of the Commission, were ignorant of the nature of the tribunal which they assisted in founding. Indeed, the second report of the Commission puts it beyond question that suits of this character were very fully considered by the Commissioners, for it devotes several pages to a consideration of the mode of dealing with the offences of the clergy, and specifies 'advancing doctrines not conformable to the Articles of the Church' among such offences, while, so far as the Church Discipline Act of 1840 is concerned, it is enough to say that it relates to spiritual causes and to none other.

It is not intended to discuss the question of the fitness of the Court as at present constituted for the fulfilment of its

important duties as a Tribunal of Appeal, nor to do more than refer to the widespread dissatisfaction which its judgments have occasioned. As the Court is the natural outcome of the constitutional doctrine of the Supremacy of the Crown, any attempt to set up any other tribunal than her Majesty in Council must fail as long as the connection between Church and State rests upon its present basis. There appears to be two ways, however, consistently with the union of Church and State, not of altering in point of principle, but of modifying the present character of the Court, either of which, if adopted, might render its decrees less generally unpopular among Church people—

1. By increasing the number of Bishops with seats on the Committee, by conferring on a selected few the rank of Privy Councillor.

2. By sanctioning a discretionary power of sending questions involving matters of doctrine before a Committee of Prelates for their report; such report to be used by the Committee, *ad informandam conscientiam*, but in no sense to be binding or conclusive.

Much, however, of the unpopularity of this tribunal which has been made the subject of unlimited and most bitter abuse is due to the misconceptions which are abroad as to its true character and function. It cannot be too clearly stated that it is no part of the duty of the Court to settle or determine doctrine, to declare what is theologically sound or unsound, or to settle matters of faith. The Court is a court of construction. Its duty is to explain the meaning of legal documents according to the known legal rules which govern the interpretation of statutes and written instruments. It has disclaimed repeatedly the right to usurp the functions which belong properly to Synods and Councils, and has been studiously careful to confine its action to the narrow point whether statements

or practices are so repugnant to the plain meaning of the Articles and Formularies as to merit judicial condemnation. But the basis upon which the Court acts will be best understood by the selection and statement of some of the principles which the Committee itself has laid down, and which limit and control the exercise of its functions :—

1. It is not for the Court to decide whether opinions are theologically sound or unsound, but whether such opinions are contrary, or repugnant to, the doctrines which the Church of England, by its Articles, Formularies, and Rubrics, requires to be held by its Ministers (pp. 23, 229).

2. The Court will apply to the construction of the Articles and Liturgy the same rules which have been long established, and are by law applicable to the construction of all written instruments, assisted only by the consideration of such rational or historical facts as may be necessary for the understanding of the subject matter to which the instruments relate, and the meaning of the words employed (pp. 22, 23, 230).

3. The Court has no jurisdiction or authority to settle matters of faith, or to determine what ought in any particular to be the doctrine of the Church of England; its duty extends only to the consideration of that which is by law established to be the doctrine of the Church of England upon the true and legal construction of her Articles and Formularies (pp. 35, 95, 231).

4. With respect to the legal tests of doctrine in the Church of England by the application of which the Judicial Committee is to try the soundness of passages libelled, it is the province of that Court, on the one hand, to ascertain the true construction of the Articles of Religion and Formularies referred to in each charge according to the legal rules for the interpretation of statutes and written instruments; and, on the other hand, to ascertain the plain

grammatical meaning of the passages which are charged as being contrary to, or inconsistent with, the doctrines of the Church (p. 95).

It is not the part of the Court of the Arches, nor of the Committee, to usurp the functions of a Synod or Council. Their duties are much more circumscribed; namely, to ascertain whether certain statements are so far repugnant to, or contradictory of, the language of the Articles and Formularies, construed in their plain meaning, that they should receive judicial condemnation (p. 244).

LIST

OF THE

JUDICIAL COMMITTEE

OF

HER MAJESTY'S MOST HONOURABLE PRIVY COUNCIL.

Established by 3 & 4 Will. IV. c. 41, for hearing and reporting on Appeals to her Majesty in Council.

1872.

The Lord High Chancellor (Lord Hatherley).
The Marquis of Ripon (Lord President).
The Duke of Buckingham (late Lord President).
The Duke of Marlborough
The Duke of Buccleugh
The Earl Granville
The Earl Russell
} formerly Lord Presidents.

Lord St. Leonard's
Lord Chelmsford
Lord Westbury
} formerly Lord Chancellors.

Lord Romilly (Master of the Rolls).
Lord Cairns (late Lord Chancellor).
Lord Penzance (Judge of H.M. Court of Probate and Divorce).
Right Hon. Stephen Lushington (late Judge of the High Court of Admiralty).
Right Hon. Sir A. J. E. Cockburn, Bart., L.C.J. of the Court of Queen's Bench.
Right Hon. Sir J. T. Coleridge, Knt. (formerly a Judge of the Court of Queen's Bench).
Right Hon. Sir W. Erle, Knt. (late L.C.J. of the Court of Common Pleas).
*Right Hon. Sir J. W. Colvile, Knt. (formerly C.J. of the Supreme Court at Calcutta).

* Those marked are paid members of the Court under statute 34 & 35 Vict. c. 91.

Right Hon. Sir E. V. WILLIAMS, Knt. (formerly a Judge of the Court of Common Pleas).

Right Hon. Sir FITZROY E. KELLY, Knt., L.C.B. of the Court of Exchequer.

Right Hon. Sir R. T. KINDERSLEY, Knt. (late a Vice-Chancellor of the Court of Chancery).

Right Hon. Sir W. BOVILL, Knt., L.C.J. of the Court of Common Pleas.

Right Hon. Sir R. J. PHILLIMORE, Knt., Judge of the High Court of Admiralty.

Right Hon. Sir JOSEPH NAPIER, Bart. (formerly Lord Chancellor of Ireland).

Right Hon. Sir W. M. JAMES, Knt., L.J. of the Court of Appeal in Chancery.

Right Hon. Sir GEORGE MELLISH, Knt., L.J. of the Court of Appeal in Chancery.

*Right Hon. Sir M. E. SMITH, Knt. (late a Judge of the Court of Common Pleas).

*Right Hon. Sir R. P. COLLIER, Knt. (late a Judge of the Court of Common Pleas).

*Right Hon. Sir BARNES PEACOCK, Knt. (formerly C.J. of the Supreme Court at Calcutta).

Right Hon. Sir J. S. WILLES, Knt., a Judge of the Court of Common Pleas.

Right Hon. MONTAGUE BERNARD.

Assessor:—

Right Hon. Sir LAWRENCE PEEL, Knt. (formerly C.J. of the Supreme Court at Calcutta).

For hearing of Appeals under 3 & 4 Vict. c. 86:—

Right Hon. and Most Rev. the Lord Archbishop of CANTERBURY (Dr. Tait).

Right Hon. and Most Rev. the Lord Archbishop of YORK (Dr. Thomson).

Right Hon. and Right Rev. the Lord Bishop of LONDON (Dr. Jackson)

* Those marked are paid members of the Court under statute 34 & 35 Vict. c. 91.

PRIVY COUNCIL JUDGMENTS.

THE REVEREND GEORGE CORNELIUS GORHAM, CLERK . . . . . } APPELLANT;

AND

THE RIGHT REVEREND THE LORD BISHOP OF EXETER (DR. PHILPOTTS) . . . . . } RESPONDENT.*

On Appeal from the Arches Court of Canterbury.

It is not for the Court to decide whether opinions are theologically sound or unsound, but whether such opinions are contrary or repugnant to the doctrines, which the Church of *England*, by its Articles, Formularies, and Rubrics, requires to be held by its Ministers.

The Court will apply to the construction of the Articles and Liturgy the same rules which have been long established, and are by Law applicable to the construction of all written instruments, assisted only by the consideration of such rational or historical facts, as may be necessary for the understanding of the subject matter to which the instruments relate, and the meaning of the words employed.

In all cases in which the Articles, considered as a test, admit of different interpretations: *Held*, that any sense of which the words fairly admit may be allowed, if that sense be not contradictory to something which the Church has elsewhere allowed or required; and if there be any doctrine on which the Articles are silent or ambiguously expressed, so as to be capable of two

* *Present*: Lord Langdale, M.R.; Lord Campbell; Sir James Parke (Baron of the Exchequer); Dr. Lushington; Sir J. L. Knight Bruce (V.C.); Mr. T. Pemberton Leigh; also, on special summons, the Archbishop of Canterbury (Dr. Sumner); the Archbishop of York (Dr. Musgrave); the Bishop of London (Dr. Blomfield).

meanings: *Held*, that it was intended to leave that doctrine to private judgment, unless the Rubrics and Formularies clearly and distinctly decide it.

Devotional exercises and services cannot be evidence of faith or of doctrine without reference to the distinct declarations of doctrine in the Articles; and where devotional expressions involving assertions occur in a service they must not, as of course, be taken to have an absolute and unconditional sense, apart from a careful consideration of the nature of the subject and the true doctrine applicable to it.

The Court has no jurisdiction or authority to settle matters of faith, or to determine what ought in any particular to be the doctrine of the Church of *England*; its duty extends only to the consideration of that which is by Law established to be the doctrine of the Church of *England*, upon the true and legal construction of her Articles and Formularies.

A Clerk refused institution by a Bishop on the ground of unfitness, by reason of his holding, as alleged, doctrines contrary to the true Christian Faith, and the doctrines contained in the Articles and Formularies of the United Church of *England* and *Ireland*: *Held*, that it is not contrary or repugnant to the declared doctrine of the Church of *England*, as by Law established, to hold, that the grace of regeneration does not so necessarily accompany the act of Baptism that regeneration invariably takes place in Baptism; that the grace may be granted before, in, or after Baptism; that Baptism is an effectual sign of grace, by which God works invisibily in us, but only in such as worthily receive it—that in them alone it has a wholesome effect; and that, without reference to the qualification of the recipient, it is not in itself an effectual sign of grace; and that in no case is regeneration in Baptism unconditional.

Judgment of the Court of the Arches reversed, and order made for institution of the Clerk.

Dec. 11, 1849.

Statement.

THIS case was an Appeal from the Arches Court of *Canterbury* in a suit brought by the Appellant against the Bishop of *Exeter*, for refusing him institution to the living of *Brampford Speke*, to which he had been presented by Lord Chancellor *Cottenham*.

1849.

GORHAM v. BISHOP OF EXETER.

Statement.

The Appellant, the Reverend *George Cornelius Gorham*, ex-Fellow of Queen's College, *Cambridge*, had been ordained in 1812, and had held the living of *St. Just-in-Penwith*, in the Diocese of *Exeter*, since 1846. In June 1847 the Lord Chancellor, on behalf of her Majesty, having offered him the living of *Brampford Speke*, in the same Diocese, he forwarded to the Bishop of *Exeter*, for his counter-signature, the testimonial required in such cases, signed by three beneficed clergymen. Instead of the usual attestation that the three subscribing clergymen were beneficed in his Diocese and worthy of credit, the Bishop wrote in the margin of the document the following words:—

'The clergymen who have subscribed this testimonial are highly respectable; but, as I consider the Bishop's counter-signature of such a document, if it be unaccompanied by any remark, as implying his own belief that the party to whom it relates "has not held, written, or taught anything contrary to the doctrine or discipline of the United Church of *England* and *Ireland*;" and as my own experience unfortunately attests that the Rev. *George C. Gorham* did, in the course of last year, in correspondence with myself, hold, write, and maintain what is contrary to the discipline of the said Church, and as what he further wrote makes me apprehend that he holds also what is contrary to its doctrine, I cannot conscientiously counter-sign this testimonial.'

'H. EXETER.'

'August 29, 1847.'

The Bishop, on Mr. *Gorham's* remonstrance, having refused to withdraw the words written on the testimonial, Mr. *Gorham* wrote and explained the circumstances to the Lord Chancellor, who thereupon ordered the presentation to be made out, and wrote to the Bishop of *Exeter*, October 11, 1847, to state that he had signed the Fiat for Mr. *Gorham's* presentation, it appearing to him that 'the object of the Bishop's counter-signature is only to give validity to the testimonials of the clergyman; and that whatever

1849.

GORHAM v. BISHOP OF EXETER.

Statement.

power the Law may give, to the Bishop upon the ground of life or doctrine, over the Presentee, must follow, and cannot precede presentation.' The presentation was accordingly made out, and was issued under the Great Seal on November 2.

On Nov. 6, Mr. *Gorham* applied by letter to the Bishop for institution, and after some correspondence the Bishop, on Nov. 13, intimated to Mr. *Gorham* that before institution he felt it to be his duty to ascertain by examination whether he was sound in doctrine. Mr. *Gorham* having assented to this course, the examination commenced at Bishopstowe on Dec. 17, 1847, and continued at intervals to March 11, 1848, notwithstanding protests on the part of Mr. *Gorham* for its minute and inquisitorial character. In the course of the examination 149 questions were proposed by the Bishop and answered by Mr. *Gorham*, all of which were reduced to writing, published by Mr. *Gorham*, and acknowledged as a true account by the Bishop, who incorporated the book in his Act on Petition to the Court of the Arches.

Examination of Mr. Gorham.

The passages which are material for the purposes of this proceeding are contained in Mr. *Gorham's* answers to Questions V., VI., and VII. They are as follows:—

Question V. Does our Church hold, and do you hold, that every infant baptised by a lawful Minister with water in the name of the Father, and of the Son, and of the Holy Ghost, is made by God in such Baptism a member of Christ, the child of God, and an inheritor of the kingdom of heaven?

Question VI. Does our Church hold, and do you hold, that such children by the laver of regeneration in Baptism, are received into the number of the children of God, and heirs of everlasting life?

Question VII. Does our Church hold, and do you hold, that all infants so baptised are born again of water, and of the Holy Ghost?

Answer. As these three questions all imply the same description of answer, I will discuss them together.

And generally I reply that these propositions, being

1849.

GORHAM v. BISHOP OF EXETER.

Statement.

stated in the precise words of the Ritual Services, or of the Catechism, undoubtedly must be held by every honest member of the Church to 'contain in them nothing contrary to the Word of God, or to sound doctrine, or which a godly man may not with a good conscience use and submit to, or which is not fairly defensible, . . . if it shall be allowed such just and favourable construction as in common equity ought to be allowed to all human writings, especially such as are set forth by authority.'—(Preface to the Book of Common Prayer.)

Examination of Mr. Gorham.

Now the 'just and favourable construction' of passages like these (occurring in Services intended for popular use), which, taken in their naked verbality, might appear to contradict the clearest statements of Scripture, and of the Church herself, must be sought, chiefly (I.), by bringing them in juxtaposition with the precise and dogmatical teaching of the Church in her explicit standard of doctrine, the Thirty-Nine Articles; in the next place (II.) by comparing the various parts of her Formularies with each other; and collaterally (III.) by ascertaining the views of those by whom her Services were reformed and the Articles sanctioned.

The real point involved in these questions is the efficacy of the Sacrament of Baptism, not merely in infants, but in adults; and that question cannot be fairly dissevered from the efficacy of the other Sacrament—that of the Lord's Supper.

I. The Articles distinctly and with severe precision lay down the doctrine for both Sacraments; which is this:—That not right administration merely, but worthy reception, is essential to their becoming 'effectual signs of grace.' 'In such only as worthily receive the same they have a wholesome effect or operation.' (Article 25.) And 'the grace of God's gifts' is said to be conferred only on such as 'by faith and rightly do receive' them. (Article 31.) The doctrine thus generally stated for both kinds applies to Baptism of course; and of that Sacrament it is *eo nomine* declared, 'that they that receive Baptism rightly' (that is, not merely by lawful administration, but by worthy re-

1849.

GORHAM v. BISHOP OF EXETER.

Statement.

ception) 'are grafted into the Church; the promises of forgiveness of sin, and of our adoption to be the sons of God by the Holy Ghost, are visibly signed and sealed; faith is confirmed, and grace increased by virtue of prayer unto God.' (Article 27.) No distinction is made between adults and infants in this Article, though the case of the latter was expressly in the mind of its framers, as appears by the charitable declaration at its close. 'The Baptism of young children is in any wise to be retained in the Church, as most agreeable with the institution of Christ.' Yet, once more, the three remarkable expressions above cited are combined in Article 28, in which the doctrine of the Church is luminously set forth, as in a sunbeam, that none have a beneficial communion of the Body and Blood of Christ, but 'such as rightly, worthily, and with faith receive the same.' See also Article 29: 'The wicked and such as be void of a lively faith, although they do carnally and visibly press with their teeth (as St. *Augustine* saith), the Sacrament of the Body and Blood of Christ, yet in no wise are they partakers of Christ; but rather to their condemnation do they eat and drink the sign or sacrament of so great a thing.'

Such—according to the authoritative teaching of the Articles, (those grave and formal declarations of Divine Truth accepted by both Houses of Convocation), by which the language of all Formularies and Services, as well as all expositions and examinations of their import, must be rigorously tested, as their standard,—such is the doctrine of the Church on the efficacy of both Sacraments, and, therefore, of Baptism. Where there is no worthy reception there is no bestowment of grace.

Examination of Mr. Gorham.

II. The Formularies teach the same doctrine when fairly construed, though sometimes in a form less definite.

(*a*) In the Catechism 'the inward and spiritual grace' is carefully distinguished from the 'outward and visible sign,' which is its token, its pledge, and its manifestation, when 'rightly received.' The conditions of repentance and faith are expressly required of persons to be

baptised, even of infants, who must enter into these stipulations by their representatives, and who, 'when they come of age, are bound to perform' the covenants which their sponsors made on their behalf.

(*b*) In the Baptismal Services (for adults as well as infants, for we are not at liberty to sever the two in this argument) the benefits of the Sacrament are, in a similar way, suspended on its worthy reception. 'Faith' and 'repentance' are declared by the adult in his own person, and are stipulated by the infant through its sponsors, as dispositions which exist, or shall hereafter exist, in the mind of the candidate. The whole service, therefore, is constructed on the assumption that these promises are sincere, on the hypothesis that the requirements have been or shall be performed. In this charitable hope the Formularies of the Church affirm that the subject of Baptism is 'a member of Christ, the child of God, and an inheritor of the kingdom of heaven.' (Question V.) He was made such, by solemn dedication with the prayers of the Church, by open profession with his own lips, or by the stipulations of his sponsors (to be hereafter, possibly as soon as the infant faculties are sufficiently developed, or at all events in riper years, fulfilled by himself); and he was also made such by the covenant of God, certified by His own seal, that on His part nothing should be wanting to give His adopted child the full effect of these blessings. This interpretation of the affirmations in the Baptismal Ritual is confirmed by the language of one of the Homilies, which reminds us that by 'holy promises, with calling the name of God to witness, we be made lively members of Christ, when we profess His religion, receiving the Sacrament of Baptism.' (Homily on Swearing, part i.) It is in the same prospective confidence in the sincere performance by infants of those engagements by which they were bound by their sureties (as their ripening capacities shall enable them to fulfil those pledges) that the Church declares (but always with an implied conditional reservation, if these promises be not fulfilled, that the blessing is not

1849.

GORHAM v. BISHOP OF EXETER.

Statement.

Examination of Mr. Gorham.

conferred), that 'by the laver of regeneration in Baptism they are received into the number of the children of God, and heirs of everlasting life.' (Question VI.) In the same strain of charitable hypothesis it is affirmed that infants 'so baptised'—namely, not according to the institution of Christ, but with 'the stipulation (the answer) of a good conscience towards God'—are 'born again of water and of the Holy Ghost.' (Question VII.) It being impossible that such dispositions and fruits should exist, except when the Holy Ghost has imparted a new nature, which He may do before Baptism, in Baptism, or after Baptism, 'as He listeth.'

That the Church did not intend her language to be construed absolutely, and unconditionally, may appear from a single instance.

In the Office for Private Baptism, the Church makes two declarations as absolute as mere verbality can make them.

(1.) She makes a verbally absolute statement of the regeneration of the child in the thanksgiving, 'We yield Thee hearty thanks, most merciful Father, that it hath pleased Thee to regenerate this infant by Thy Holy Spirit,' etc.

(2.) She makes an equally unconditional assertion as to the future salvation of the infant in the exhortation, 'Beloved, ye hear,' etc.; where we are told, 'not to doubt, but earnestly believe' that result to be certain—namely, 'that He will give unto him the blessing of eternal life, and make him partaker of His everlasting kingdom.'

Nevertheless, in the concluding petition, 'We yield Thee,' etc., the Church makes that which has been the subject of positive declaration, again, the matter of humble prayer, and therefore only of conditional expectation:—'Humbly we beseech Thee to grant that . . . . finally, with the residue of Thy Holy Church, he may be an inheritor of Thine everlasting kingdom.' Thus she clearly avows that, in this instance, her language of undoubting belief and unhesitating assertion is to be 'justly construed' as only conditional, hypothetical, charitable, and hopeful.'

1849.

GORHAM v. BISHOP OF EXETER.

Statement.

It is not, therefore, inconsistent with her phraseology, or, rather, it is fully consonant with her intentions, to construe her verbally absolute declaration with regard to the regeneration of every infant in the same hypothetical manner; and this construction, being the only one which will reconcile her Liturgy with her Articles, is that which in 'common equity,' ought to be allowed, and which in common sense must be adopted.

Examination of Mr. Gorham.

The Church herself has given this intimation of the mode in which her language is to be construed at the close of the Baptismal Services, where, exhorting both infants (through their sureties) and adults, she reminds them that 'Baptism doth represent unto us our profession,' and that we who are baptised should die from sin, and rise again unto righteousness; although 'a death unto sin, and a new birth unto righteousness' (being the inward grace included in the terms 'regenerate' and 'born again'), are effects declared verbally to have taken place in, and by, the Sacrament. An hypothetical meaning and conditional construction is the only one which renders these parts of the Services consistent with each other, as well as conformable to the express teaching of the Church in her standard of doctrine.

The same conclusion follows from that passage in the Burial Service, in which, in absolute terms, we 'thank God that it hath pleased Him to deliver this our brother out of the miseries of this sinful world;' although it is manifest that we cannot definitely pronounce on the future state of every individual, in successive generations, to whom that Service is to be applied; and although, in a subsequent part of that Service, the Church falls back into the simply charitable declaration, that 'our hope is that this our brother' rests in Christ.

This construction becomes riveted on these apparently absolute expressions by the fact that, notwithstanding the declaration that baptised persons are 'born again,' the Church instructs us (in other services) to pray for this very blessing in after life. The Collect for Christmas Day, and that for the Circumcision, are prayers to this effect;

1849.

GORHAM v. BISHOP OF EXETER.

Statement.

the language of each of these prayers I consider as prospective—that of the second is so beyond controversy. The petition which concludes the first part of the Homily for Whit-Sunday is most distinct on this point, in that prayer, 'Let us give hearty thanks to God . . . . humbly beseeching Him so to work in our hearts by the power of His Holy Spirit, that we, being regenerate and newly born again in all goodness, righteousness, sobriety, and truth, may, in the end, be made partakers of everlasting life.' Regeneration, therefore, in Baptism is affirmed absolutely in words, but conditionally in meaning; it may not have taken place, and is, therefore, to be implored in after years.

Examination of Mr. Gorham.

In truth, not only many expressions in the Liturgical Services would be misinterpreted, but the language of Scripture itself might be (as it has been) awfully perverted, if the principle were not allowed that the most absolute terms must be construed sometimes in a symbolical, sometimes in a conditional sense, according to the manifest intention of the person who used them.

What can be more absolute than our Lord's affirmation respecting the bread, 'This is my body'? Transubstantiation follows from the exaction (contrary to common sense) of a literal acceptation of these words: as regeneration, by the *opus operatum* of Baptism, would follow from an exaction (contrary to the doctrine of the Articles) of an unjustly verbal construction of certain affirmations in the Baptismal Service.

We find, in the Apostolic Epistles, absolute declarations respecting the sanctified state of every individual included in the churches to whom they were written (Rom. . 7; 1 Thess. i. 1, 2, 4), though it is manifest that these affirmations must be understood as conditional and charitable assumptions.

That such is the 'just construction' of the language of the Rituals, as cited in these three questions, and as prevailing throughout the Baptismal Services, will appear, if we consider with what care those who compiled the Formularies of the Church discriminate between the sacra-

1849.

GORHAM v. BISHOP OF EXETER.

Statement.

ments, or signs, and the grace, or thing, signified, as perfectly distinct conceptions, as matters separable and often separated. I must illustrate this by both Sacraments, distinctions in kind being needless, and only perplexing the argument. The Catechism logically and most correctly defines a sacrament to be a sign of an inward and spiritual grace. Article 29 calls the mere outward element 'the sacrament, or sign,' clearly distinguished from, and not even (in the case referred to) accompanied by, 'so great a thing' as the inward grace. In the Communion of the Sick it is declared that the faithful may spiritually 'eat and drink' the body and blood, though from physical weakness we do not receive 'the sacrament,' the elemental sign. The Homilies insist strongly on this distinction. 'St. Augustine' (Homily on Common Prayer) 'calleth sacraments holy signs; and, writing of the Baptism of infants, he saith, if sacraments had not a certain similitude of those things whereof they be sacraments, they should be no sacraments at all; and of this similitude they do for the most part receive the names of the selfsame thing they signify.' And that discourse, which was written specially on this subject, warns us to mark the important difference between 'the outward sacrament and the spiritual thing, the figure and the truth, the shadow and the body.' (Homily on the Sacrament of the Body.) So Cranmer writes, 'In sacraments, saith St. Austin, is to be considered, not what they be, but what they show; for they be signs of other things, being one thing and signifying another.' (Cranmer on the Lord's Supper, b. iv. Edn. Parker Soc., 1844, p. 221.)

Examination of Mr. Gorham.

It is true that, by a metonymy, the sign is often used for the thing signified; and this practice of the early fathers, sometimes adopted in the writings of our Reformers, and in one place in our Catechism (I mean the description of a sacrament as to its 'parts,' whenever the sign and the grace are happily united by the worthy recipient), has led to confusion in the minds of those who do not carefully mark the distinction, and separability, of these two matters. But the meaning of the Church is clear, if a

1849.

GORHAM v. BISHOP OF EXETER.

'just and favourable construction be allowed' (and she herself claims it) for her expressions.

Statement.

III. The writings of the Reformers, candidly examined, throw light on the construction of Church Services. These, of course, I cannot quote at large in an extempore examination. Coverdale (Works, Edn. Parker Soc., pp. 80, 411), Latimer (Ibid., p. 202), Ridley (Ibid., p. 240), Cranmer (Ibid., p. 221; Works, Jenkyn's Edn., vol. iii. pp. 49, 121, 524), Hooper (Works, Edn. Parker Soc., pp. 74, 75), have marked the distinction and the separability of the sacrament, or sign, from the grace, or the thing signified, in precise and unmistakeable language. Jewel, the great light of that era, gives his judgment, that 'in Baptism, as the one part of that holy mystery is Christ's blood, so is the other part the material water; neither are these parts joined together in place, but in mystery, and therefore they are oftentimes severed, and the one is received without the other.' (Reply to Harding, p. 285, Edn. 1609.)

Neither Jewel, nor any other expositor, is my standard. I base my doctrines on the 39 Articles; but the above citation from this eminent Bishop, so well qualified to give his judgment, expresses generally my view of the Sacrament of Baptism.

Examination of Mr. Gorham.

Questions XVIII. and XIX., and the answers thereto, are also material.

Question XVIII. Has the Church not declared her mind, that infants baptised by a lawful Minister, in the name of the Father, and of the Son, and of the Holy Ghost, do receive the spiritual grace of Baptism, even if they have not entered into the stipulations by their representatives?

Answer. The Church has declared that, to infants privately baptised, the grace and mercy of Christ is not denied. In this case of emergency I consider that stipulations, though not formally made by sponsors, are made by implication through those who earnestly desire their Baptism, and by the person who administers it, which implied stipulations the Church requires to be formally adopted, as soon as the circumstances will suffer it. This

1849.

GORHAM v. BISHOP OF EXETER.

Statement.

case of 'present exigence' cannot, therefore, be fairly urged as an exception to the requirements of the Church.

In the Catechism the Church puts the question, 'Why, then, are infants baptised, when, by reason of their tender age, they cannot perform them, (the 'promises' made by their sureties), 'without limitation to infants baptised under any particular circumstances?' It is a question stating the difficulty in its broadest and most general character.

Now the answer, which the Church gives, brings us of necessity to one of three conclusions:—

Either (*a*) the Church intended unworthily to evade the principal difficulty—namely, the case of infants baptised in emergency, without the formal stipulations, the execution of which is declared in the answer to solve the difficulty proposed.

Or (*b*) she intended to impose a charitable silence on her members with regard to so nice and curious a point, shutting up all further search in the promises of God, as generally set forth in Holy Scripture.

Or (*c*) she intended to embrace that case in her general answer, and to consider that the stipulations were implied under these urgent circumstances (to be hereafter absolutely entered into if more favourable circumstances permitted), though they were not formally given.

The first of these suppositions, of course, I dismiss peremptorily.

The second hypothesis would put an end to all further enquiry into the subject.

The third conclusion therefore, which I adopt, is the only solution which is possible, if I am required to declare my view of the meaning of the Church.

Examination of Mr. Gorham.

Question XIX. Does the Church hold, and do you hold, that infants so baptised are regenerated, independently of the stipulations made by their representatives, or by any others for them?

Answer. If such infants die before they commit 'actual sin,' the Church holds, and I hold, that they are 'undoubtedly saved;' and, therefore, they must have been regenerated by an act of grace prevenient to their Baptism,

1849.

GORHAM v. BISHOP OF EXETER.

Statement.

in order to make them worthy recipients of that Sacrament. This case is ruled by the Church—I mean, it is ruled that they were actually regenerated, and are undoubtedly saved.

But if the infant lives to a period in which it can commit 'actual sin,' the declaration of regeneration must be construed according to the hypothetical principle, which I have stated in my replies to Questions V., VI., and VII.

That part of this question which relates to sponsorship, in these cases, I have replied to in the answer to Question XVIII., so far as the mind of the Church can be ascertained.

Result of Examination. Proceedings in Court of the Arches.

The examination having concluded, Mr. *Gorham* was apprised on March 11, 1848, that the Bishop, having regard to the unsoundness of the doctrines stated by him, felt bound to decline to institute him. Mr. *Gorham* thereupon had recourse to legal proceedings to compel him, and obtained a monition from the Dean of the Arches, grounded on a Duplex Querela,* monishing the Bishop of *Exeter* to institute Mr. *Gorham*, or to show cause why he should not do so within fifteen days, failing which the Dean of the Arches would proceed to institute Mr. *Gorham*.

Act on Petition.

The Bishop's reply is contained in the 'Act on Petition.' This document states that, on Mr. *Gorham's* presentation, the Bishop proceeded, as he was bound, to examine him, in order to ascertain his fitness, and adds, 'That it appeared to the Bishop, in the course of his examination, that Mr. *Gorham* was of unsound doctrine respecting that great and fundamental point the efficacy of the Sacrament of Baptism, inasmuch as he held and persisted in holding that spiritual regeneration is not given or conferred in that holy

* 'Duplex Querela (double *querele*, or complaint), called improperly *double quarrel*, is a complaint made by any Clerk or other to the Archbishop of the province against any inferior ordinary for delaying justice in any cause ecclesiastical; as to give sentence, or to institute a clerk presented, or such like. It seems to be called a *double querele* because it is most commonly made both against the judge and against the party at whose request justice is delayed by the said judge.'—Burn's Eccl. Law, vol. ii.

1849.

GORHAM v. BISHOP OF EXETER.

Statement.

Sacrament; in particular that infants are not made therein members of Christ, and children of God, contrary to the plain teaching of the Church of *England* in her Articles and Liturgy, and especially contrary to the divers offices of Baptism, the office of Confirmation, and the Catechism, severally contained in the Book of Common Prayer, and administration of the Sacraments, and other rites and ceremonies of the Church, according to the use of the United Church of *England* and *Ireland*.' The Act on Petition further stated that Mr. *Gorham* had published an account of the examination, and, in part supply of proof, it referred to the said book, brought into the Registry.

Answer of Mr. Gorham.

The answer of Mr. *Gorham*, after admitting the book brought in by the Bishop to have been published by him, and that the contents were true and accurate, distinctly and emphatically denied that he at any time maintained unsound doctrines respecting the efficacy of the Sacrament of Baptism, or that he held opinions thereon at variance with the plain teaching of the Church of *England* in her Articles and Liturgy; it further denied that he held that infants are not made in Baptism members of Christ and children of God, and alleged that he did not maintain any views whatsoever contrary to the true doctrine of the Church of *England*, as dogmatically determined in her Articles, familiarly taught in her Catechism, and devotionally expressed in her Services, it having been his desire and endeavour throughout his examination to explain the language both of her Articles and Liturgy (in compliance with the express directions of the Church herself), by such 'just and favourable construction' as would secure an entire agreement, not only of each with the others, but of all alike with the plain tenor of Holy Scripture, declared by the Articles to be of paramount and absolute authority.

After a rejoinder from the Bishop, and an affidavit from Mr. *Gorham* verifying the statements contained in his answer, the cause came on for hearing before Sir *Herbert Jenner Fust*, the Dean of the Arches Court, on January 31, and again on February 17 and 27, and on March 1, 3, 6,

1849.

GORHAM v. BISHOP OF EXETER.

Statement.

and 10, 1848. Dr. *Addams* and Dr. *Robinson* were for the Bishop; Dr. *Bayford* for Mr. *Gorham.*

Judgment in the Court of the Arches.

The judgment of the Dean of the Arches was delivered on August 2, 1849. After recapitulating the circumstances of the case, the learned Judge showed that the issue was narrowed to the question of the efficacy of infant Baptism. He declared the Articles to be *primâ facie* the standard of doctrine; but held that, if the Articles were silent on any controverted point, the Formularies of the Church must be consulted. As to Baptism, the Articles declared that it is of use only to those that worthily receive it; but they do not state in what worthy reception consists. But the Formularies declare that a child 'is by Baptism regenerate,' and as this declaration is unconditional in the Service for Private Baptism, it must be taken as unconditional in the Service for Public Baptism. So long as the Articles and Services of the Church are reconcileable, and not only reconcileable, but necessarily consistent, the learned Judge held that he must construe them together. If a doctrine were laid down in the Baptismal and other Services and in the Rubrics, he must look to that source for his guide, if the Articles were silent on the point, and not indulge in fancy, explaining it by the opinions expressed by private individuals. He accordingly came to the following conclusion:—That, as the doctrine of the Church of *England* undoubtedly is, that children baptised are regenerated at Baptism, and are undoubtedly saved if they die without committing actual sin, Mr. *Gorham* has maintained, and does maintain, opinions opposed to that Church of which he professes himself a member and minister; and, further, that the Bishop had shown sufficient cause why he should not institute Mr. *Gorham* to the living of *Brampford Speke*, and that he was entitled to be dismissed, with costs.

Appeal to Privy Council.

From this decree Mr. *Gorham* having appealed to her Majesty in Council, the appeal came on to be heard on December 11, 1849.

Mr. *Turner*, Q.C., and Dr. *Bayford* for the Appellant;
Dr. *Addams* and Mr. *Badeley* for the Respondent.

1849.

GORHAM v. BISHOP OF EXETER.

After argument, judgment was reserved to March 8, 1850, when the following judgment was read by

LORD LANGDALE :—*

March 8, 1850. Judgment of Committee of Privy Council.

This is an appeal by the Reverend *George Cornelius Gorham* against the sentence of the Dean of the Arches Court of *Canterbury* in a proceeding called a Duplex Querela, in which the Right Reverend the Lord Bishop of *Exeter*, at the instance of Mr. *Gorham*, was called upon to show cause why he had refused to institute Mr. *Gorham* to the Vicarage of *Brampford Speke*.

The Judge pronounced that the Bishop had shown sufficient cause for his refusal, and thereupon dismissed him from all further observance of justice in the premises, and, moreover, condemned Mr. *Gorham* in costs.

From this sentence Mr. *Gorham* appealed to her Majesty in Council. The case was referred by her Majesty to this Committee. It has been fully heard before us; and, by the direction of her Majesty, the hearing was attended by my Lords the Archbishops of *Canterbury* and *York* and the Bishop of *London*, who are members of her Majesty's Privy Council. We have the satisfaction of being authorised to state that the Most Reverend Prelates the Archbishops of *Canterbury* and *York*, after perusing copies of our judgment, have expressed their approbation thereof. The Right Reverend the Lord Bishop of *London* does not concur therein.

The facts, so far as it is necessary to state them, are as follows :—

Statement of the case.

Mr. *Gorham* being Vicar of *St. Just in Penwith*, in the Diocese of *Exeter*, on November 2, 1847, was presented by her Majesty to the Vicarage of *Brampford Speke*, in the same Diocese, and soon afterwards applied to the Lord Bishop of *Exeter* for admission and institution to the Vicarage.

The Bishop, on November 13, caused Mr. *Gorham* to

* *Also present*: Lord Campbell, Dr. Lushington, Mr. Pemberton Leigh (Lord Kingsdown).

1850.

GORHAM v. BISHOP OF EXETER.

Judgment.

be informed, that his Lordship felt it his duty to ascertain by examination, whether Mr. *Gorham* was sound in doctrine before he should be instituted to the Vicarage of *Brampford Speke.*

The examination commenced on December 17, and was continued at very great length for five days in the same month of December, and (after some suspension) for three more days in the following month of March.

The questions proposed by the Bishop related principally to the Sacrament of Baptism, and were very numerous, much varied in form, embracing many points of difficulty, and often referring to the answers given to previous questions.

Mr. *Gorham* did not at first object to the nature of the examination; but, during its progress, he at various times remonstrated against the manner in which it was conducted, and the length to which it extended. We are, however, relieved from the necessity of considering whether he could, or could not, lawfully have declined to submit to such a course of examination; because he did, in fact, answer nearly all the questions, and no complaint is made of his not having answered them all.

Refusal to institute.

The examination being concluded, the Bishop refused to institute Mr. *Gorham* for the reason (as stated in the notification) that he had, upon examination, found Mr. *Gorham* unfit to fill the Vicarage, by reason of his holding doctrines contrary to the true Christian faith, and the doctrines contained in the Articles and Formularies of the United Church of *England* and *Ireland*, and especially in the Book of Common Prayer, administration of the Sacraments, and other rites and ceremonies of the Church, according to the use of the United Church of *England* and *Ireland.*

Proceedings in Court of the Arches.

Mr. *Gorham*, being refused institution, commenced proceedings in the Arches Court of *Canterbury*; and at his promotion a monition with intimation issued on June 15, 1848, and thereby the Bishop was monished to admit Mr. *Gorham* to the Vicarage, and to institute and invest him therein; or otherwise to appear and show cause why Mr. *Gorham* should not be admitted and in-

stituted by the Official Principal of the Arches Court of *Canterbury*.

After litigation had thus commenced, and Mr. *Gorham* had called upon the Bishop to state why institution was refused, it became evident that the reasons must be considered upon legal principles, and it was perhaps reasonably to be expected that both parties would require a strict and formal proceeding, in which what was the particular unsound doctrine imputed to Mr. *Gorham* would have been distinctly alleged which constituted his alleged offence.

Act on Petition.

Unfortunately this course was not adopted. The Bishop proceeded by Act on Petition; and in his Act he stated his charge against Mr. *Gorham*, and alleged that it appeared to him, in the course of the examination, that Mr. *Gorham* was of unsound doctrine respecting that great and fundamental point of Baptism, inasmuch as Mr. *Gorham* held, and persisted in holding, that spiritual regeneration is not given or conferred in the holy Sacrament in particular—that infants are not made members of Christ and the children of God—contrary to the plain teaching of the Church of *England*, in her Articles and Liturgy, and especially contrary to the divers offices of Baptism, the office of Confirmation, and the Catechism, severally contained in the Book of Common Prayer, and administration of the Sacraments, and other rites and ceremonies of the Church, according to the use of the United Church of *England* and *Ireland*.

In part supply of proof of the premises, the Bishop referred to a book written and caused to be printed by Mr. *Gorham*, containing, amongst other things, the several questions put by the Bishop to Mr. *Gorham* in the course of the examination, and Mr. *Gorham's* several answers to the same questions.

Answer of Mr. Gorham.

Mr. *Gorham* made no objection to the mode of proceeding by Act on Petition, but put in his Answer thereto; and thereby, after alleging that the book published by him, and brought into Court by the Bishop, 'contained a full, true, and accurate account of all the questions and answers which were given in the course of the examination,' he

1850.

GORHAM v. BISHOP OF EXETER.

Judgment.

distinctly and emphatically denied that he, in his examination, did maintain, or had at any time maintained, unsound doctrine respecting the efficacy of the Sacrament of Baptism; or that he had held, or persisted in holding, any opinions thereon at variance with the plain teaching of the Church of *England* in her Articles and Liturgy; and further explicitly and expressly denied that he either held, or persisted in holding, that infants are not made in Baptism members of Christ and children of God; and he alleged that he did not maintain any views whatever contrary to the true doctrine of the Church of *England*, as dogmatically determined in her Articles, familiarly taught in her Catechism, and devotionally expressed in her Services, it having been his desire and endeavour throughout the examination to explain the language both of her direct Articles and Liturgy (in compliance with the expressions of the Church herself) by such just and favourable construction as would secure an entire agreement, not only of each with the other, but of all alike, with the plain tenor of Holy Scripture declared by the said Articles to be of paramount and absolute authority. The Bishop replied to Mr. *Gorham's* answers generally. The book published by Mr. *Gorham* was the only evidence adduced on either side; and with such allegations as are contained in the Bishop's Act on Petition and Mr. *Gorham's* Answer, the case was brought on to be heard, with no statement on the part of the Bishop of what was, in his Lordship's view, the true doctrine of the Church of *England*, in respect of the efficacy of the Baptism either of adults or infants; nor any specification of the doctrine imputed to Mr. *Gorham*, except the general charge before stated; and no distinct statement on the part of Mr. *Gorham* of what, in his view, is the true doctrine of the Church of *England*—what is the particular doctrine which himself maintains on the subject in question, or in what particulars, or for what particular expressions, he requires the just and favourable construction which he considers to be necessary and sufficient to secure the entire agreement between the Articles and the Liturgy and his doctrine. As this form of pleading was acquiesced in on

Defects in the pleadings.

1850.

GORHAM v. BISHOP OF EXETER.

Judgment.

both sides, neither party has any reason to complain of the other; but those who are called upon to judge of the matters in difference have great reason to complain that, instead of their attention being directed, as it ought to have been, to specific propositions distinctly stated, and to the evidence directly applicable to those propositions, instead of having a specific and precise statement of that which the Bishop alleged to be the doctrine of the Church of *England* upon the matters in question, and upon which he meant to rely, and of the specific doctrine held or imputed to Mr. *Gorham* and alleged to be unsound, the case is brought forward and left in such a form that, without being supplied with any allegations distinctly stated, or any issue distinctly joined, we are required minutely and accurately to examine a long series of questions and answers —questions upon a subject of a very abstruse nature, intricate, perplexing, entangling, and many of them not admitting of distinct and explicit answers; and answers not given plainly and directly, but in a guarded and cautious manner, with the apparent view of escaping from some apprehended consequences of plain and direct answers. The inconvenience of this course of proceeding is so great, and the difficulty of coming to a right conclusion is thereby so unnecessarily increased, that, in our opinion, the Judge below would have been well justified in refusing to pronounce any opinion upon the case as appearing upon such pleadings, and in requiring the parties, even at the last moment, to bring forth the case in a regular manner by plea and proof.

The case comes before us precisely in the same state; and although the Counsel on both sides have used their best endeavours to remove the vagueness and uncertainty found in the pleadings, as well as in the examination, and have thereby much assisted us, they have not been able entirely to remove the difficulty.

Consideration of Mr. Gorham's examination.

In considering the examination, which is the only evidence, we must have regard not only to the particular question to which each answer is subjoined, but to the general scope, object, and character of the whole examina-

1850.

GORHAM v. BISHOP OF EXETER. Judgment.

tion; and if, under circumstances so peculiar and perplexing, some of the answers should be found difficult to be reconciled with one another (as we think is the case), justice requires that an endeavour should be made to reconcile them in such a manner as to obtain the result which appears most consistent with the general intention of Mr. *Gorham* in the exposition of his doctrine and opinions.

Doctrine of Baptism as held by Mr. Gorham.

Adopting this course, the doctrine held by Mr. *Gorham* appears to be this: that Baptism is a sacrament generally necessary to salvation, but that the grace of regeneration does not so necessarily accompany the act of Baptism that regeneration invariably takes place in Baptism; that the grace may be granted before, in, or after Baptism; that Baptism is an effectual sign of grace, by which God works invisibly in us, but only in such as worthily receive it—in them alone it has a wholesome effect—and that, without reference to the qualification of the recipient, it is not in itself an effectual sign of grace; that infants baptised, and dying before actual sin, are certainly saved; but that in no case is regeneration in Baptism unconditional.

Question to be decided by the Committee.

These being, as we collect them, the opinions of Mr. *Gorham*, the question which we have to decide is, not whether they are theologically sound or unsound—not whether upon some of the doctrines comprised in the opinions, other opinions opposite to them may or may not be held with equal or even greater reason by other learned and pious Ministers of the Church—but whether these opinions now under our consideration are contrary or repugnant to the doctrines which the Church of *England*, by its Articles, Formularies, and Rubrics, requires to be held by its Ministers, so that upon the ground of these opinions the Appellant can lawfully be excluded from the benefice to which he has been presented.

Principles of construction to be adhered to.

This question must be decided by the Articles and the Liturgy; and we must apply to the construction of those books the same rules which have been long established, and are by law applicable to the construction of all written instruments. We must endeavour to attain for ourselves the true meaning of the language employed, assisted only

1850.

GORHAM v. BISHOP OF EXETER.

Judgment.

by the consideration of such external or historical facts as we may find necessary to enable us to understand the subject-matter to which the instruments relate, and the meaning of the words employed.

In our endeavour to ascertain the true meaning and effect of the Articles, Formularies, and Rubrics, we must by no means intentionally swerve from the old-established rules of construction, or depart from the principles which have received the sanction and approbation of the most learned persons in times past, as being on the whole the best calculated to determine the true meaning of the documents to be examined. If these principles were not adhered to, all the rights, both spiritual and temporal, of her Majesty's subjects would be endangered.

Doctrinal character of Articles and Liturgy.

As the subject-matter is doctrine, and its application to a particular question, it is material to observe that there were different doctrines or opinions prevailing or under discussion at the times when the Articles and Liturgy were framed, and ultimately made part of the Law; but we are not to be in any way influenced by the particular opinions of the eminent men who propounded them or discussed them, or by the authorities by which they may be supposed to have been influenced, or by any supposed tendency to give preponderance to Calvinistic or Arminian doctrines. The Articles and Liturgy, as we now have them, must be considered as the final result of the discussion which took place—not the representation of the opinions of any particular men, Calvinistic, Arminian, or any other, but the conclusion which we must presume to have been deduced from a due consideration of all the circumstances of the case, including both the sources from which the declared doctrine was derived, and the erroneous opinions which were to be corrected.

Variety of opinion in the Church.

It appears, from the resolutions and discussions of the Church itself, and from the history of the time, that from the first dawn of the Reformation until the final settlement of the Articles and Formularies, the Church was harassed by a great variety of opinions respecting Baptism and its efficacy, as well as upon other matters of doctrine.

1850.

GORHAM v. BISHOP OF EXETER. Judgment.

The Church having resolved to frame Articles of Faith, as a means of avoiding diversities of opinion and establishing consent touching true religion, must be presumed to have desired to accomplish that object as far as it could, and to have decided such of the questions then under discussion as it was thought proper, prudent, and practicable to decide.

The Articles do not decide all questions.

But it could not have been intended to attempt the determination of all the questions which had arisen or might arise, or to include in the Articles an authoritative statement of all Christian doctrine; and in making the necessary selection of those points which it was intended to decide, we may be allowed to presume that regard was had to the points deemed most important to be made known to, and to be accepted by, the members of the Church, and to those questions upon which the members of the Church could agree, and that other points and other questions were left for future decision by competent authority, and in the meantime to the private judgment of pious and conscientious persons.

Some latitude of interpretation to be allowed.

Under such circumstances, it would perhaps have been impossible, even if it had been thought desirable, to employ language which did not admit of some latitude of interpretation. If the latitude were confined within such limits as might be allowed without danger to any doctrine necessary to salvation, the possible or probable difference of interpretation may have been designedly intended, even by the framers of the Articles themselves; and in all cases in which the Articles considered as a test admit of different interpretations, it must be held that any sense of which the words fairly admit may be allowed, if that sense be not contradictory to something which the Church has elsewhere allowed or required; and, in such a case, it seems perfectly right to conclude that those who imposed the test, command no more than the form of the words employed in their literal and grammatical sense conveys or implies; and that those who agree to them are entitled to such latitude or diversity of interpretation as the same form admits.

If it were supposed that all points of doctrine were decided by the Church of *England*, the law could not consider any point as left doubtful. The application of the law, or the doctrine of the Church of *England*, to any theological questions which arose, must be the subject of decision; and the decision would be governed by the construction of the terms in which the doctrine of the Church is expressed—viz. the construction which on the whole would seem most likely to be right.

Ambiguous expressions must be left to private judgment.

But if the case be, as undoubtedly it is, that in the Church of *England* many points of theological doctrine have not been decided, then the first and great question which arises in such cases as the present is, whether the disputed point is or was meant to be settled at all, or whether it is left open for each member of the Church to decide for himself according to his own conscientious opinion. If there be any doctrine on which the Articles are silent or ambiguously expressed, so as to be capable of two meanings, we must suppose that it was intended to leave that doctrine to private judgment, unless the Rubrics and Formularies clearly and distinctly decide it. If they do, we must conclude that the doctrine so decided is the doctrine of the Church. But, on the other hand, if the expressions used in the Rubrics and Formularies are ambiguous, it is not to be concluded that the Church meant to establish indirectly as a doctrine that which it did not establish directly as such by the Articles of Faith—the code avowedly made for the avoiding of diversities of opinion and for the establishing of consent touching true religion.

Application of principles of interpretation.

We must proceed, therefore, with the freedom which the administration of the Law requires, to examine the Articles and the Prayer Book for the purpose of discovering what it is, if anything, which, by the Law of *England*, or the doctrine of the Church of *England* as by Law established, is declared as to the matter now in question, and to ascertain whether the doctrine held by Mr. *Gorham*, as we understand it to be disclosed in his examination, is directly contrary or repugnant to the doctrine of the Church.

1850.

GORHAM v. BISHOP OF EXETER.

Judgment.

Considering, first, the effect of the Articles alone, it is material to observe that very different opinions as to the Sacrament of Baptism were held by different promoters of the Reformation, and that great alterations were made in the Articles themselves upon that subject.

Effect of Articles alone.

Articles of 1536.

The Articles about religion, drawn up in 1536, state it is offered unto all men, as well infants as such as have the use of reason, that by Baptism they shall have remission of sin, and the grace and favour of God; that the promise of grace and everlasting life (which promise is adjoined to the Sacrament of Baptism) pertaineth not only to such as have the gift of reason, but also to infants, innocents, and children; and that they ought, therefore, and must needs be baptised; and that by the Sacrament of Baptism they do also obtain remission of their sin, the grace and favour of God, and be made thereby the sons and children of God. Inasmuch as infants and children dying in their infancy shall undoubtedly be saved thereby, or else not. That infants must needs be christened, because they be born in original sin, which sin must needs be remitted, which cannot be done but by the Sacrament of Baptism, whereby they receive the Holy Ghost, which executes His grace and efficacy in them, and cleanseth and purifieth them from sin by His secret virtue and operation; and that men and children, having the use of reason and willing and desiring to be baptised, shall, by virtue of that holy Sacrament, obtain the grace and remission of all their sins, if they shall come perfectly and truly repentant, and contrite of all their sins before committed, and also perfectly and constantly confessing and believing all the Articles of our faith; and, finally, if they shall also have a firm credence and trust in the promise of God adjoined to the Sacrament—that is to say, that in and by this said Sacrament, which they shall receive, God the Father giveth unto them, for His Son Jesus Christ's sake, remission of all their sins, and the grace of the Holy Ghost, whereby they be newly regenerated, and made the very children of God, etc.

'The King's Book' of 1543.

In the book entitled 'A Necessary Doctrine for any Christian Man,' and called 'The King's Book,' which was

1850.

GORHAM v. BISHOP OF EXETER. Judgment.

published in 1543, it is thus stated :—'Because all men be born sinners,' 'and cannot be saved without remission of their sins, which is given in Baptism by the working of the Holy Ghost, therefore the Sacrament of Baptism is necessary for the attaining of salvation and everlasting life.' 'For which causes also it is offered, and pertaineth to all men, not only such as have the use of reason, in whom the same duly received taketh away and purgeth all kinds of sins, both original and actual, committed and done before their Baptism; but also it appertaineth and is offered unto infants, which, because they be born in original sin, have need and ought to be christened, whereby they, being offered in the faith of the Church, receive forgiveness of their sins, and such grace of the Holy Ghost that, if they die in the state of their infancy, they shall undoubtedly be saved. Because as well this Sacrament of Baptism, as all other sacraments instituted by Christ, have all their virtue, efficacy, and strength by the Word of God, which by His Holy Spirit worketh all the graces and virtues which be given by the sacraments to all those that worthily receive the same,' etc.

Articles of 1552 and 1562.

The Articles of 1552 and 1562 adopt very different language from the Articles of 1536, and have special regard to the qualification of worthy and right reception.

The 25th Article of 1562 distinctly states that in such only as worthily receive the same the sacraments have a wholesome effect or operation. The Article on Baptism, in describing the blessings conferred by it, speaks only of those who receive it rightly; and, with respect to infants, instead of saying, in the language of the Articles of 1536, that 'they obtain remission of their sins and the grace and favour of God by Baptism, and that, dying in their infancy, they shall be undoubtedly saved thereby, or else not,' it declares only 'that Baptism of young children is in anywise to be retained in the Church, as most agreeable with the institution of Christ,' stating nothing distinctly as to the state of such infants, whether baptised or not.

Articles of 1536 and 1562 distinguished.

The Articles of 1536 have expressly determined two points—1, that baptised infants, dying before the commis-

1850.

GORHAM v. BISHOP OF EXETER. Judgment.

sion of actual sin, were undoubtedly saved thereby; 2, that unbaptised infants were not saved.

The Articles of 1562 say nothing expressly upon either point, but, not distinguishing the case of infants from that of adults, state in general terms that those who receive Baptism rightly have the benefits there mentioned conferred.

Points left open by Articles.

What is signified by right reception is not determined by the Articles. Mr. *Gorham* says that the expression always means or implies a fit state to receive—viz., 'in the case of adults, 'with faith and repentance,' and, in the case of infants, 'with God's grace and favour.'

On a consideration of the Articles, it appears that, besides this particular point, there are others which are left undecided. It is not particularly declared what is the distinct meaning and effect of the grace of regeneration—whether it is a change of nature, a change of condition, or a change of the relation subsisting between sinful man and his Creator—and there are other points which may very plainly be open to different considerations in different cases.

On these points difference of opinion has existed.

Upon the points which were left open differences of opinion could not be avoided, even amongst those who sincerely subscribed to the Articles; and that such differences amongst such persons were thought consistent with subscription to the Articles, and were not contemplated with disapprobation, appears from a passage in the Royal Declaration now prefixed to the Articles, and which was first added in the reign of King Charles I., long after the Articles were finally settled. 'Though some differences have been ill-raised, yet we take comfort in this, that all Clergymen within our realm have always most willingly subscribed to the Articles established; which is an argument to us, that they all agree in the true usual literal meaning of the said Articles, and that, even in those curious points in which the present differences lie, men of all sorts take the Articles of the Church of *England* to be for them; which is an argument, again, that none of them intend any desertion of the Articles established.'

If the Articles which constitute the Code of Faith, and from which any differences are prohibited, nevertheless contain expressions which unavoidably admit of different constructions—and members of the Church are left at liberty to draw from the Articles different inferences in matters of faith not expressly decided, and upon such points to exercise their private judgments—we may reasonably expect to find such differences of opinion allowable in the interpretation of the devotional services, which were framed not for the purpose of determining points of faith, but of establishing (to use the expression of the statute of *Elizabeth*) an uniform order of Common Prayer, and of the administration of sacraments, rites, and ceremonies of the Church of *England*.

Latitude to be allowed in interpretation of devotional exercises.

In considering the Book of Common Prayer, it must be observed that there are parts of it which are strictly dogmatical, declaring what is to be believed or not doubted; parts which are instructional, and parts which consist of devotional exercises and services. Those parts which are in their nature dogmatical must be considered as declaratory of doctrine; but as to those parts which are devotional, consisting of prayers framed for the purpose of being 'more earnest, and fit to stir Christian people to the due honouring of Almighty God,' some further consideration is necessary.

Tripartite nature of Prayer Book.

It seems to be properly said that devotional exercises cannot be evidence of faith or of doctrine, without reference to the distinct declarations of doctrine in the Articles, and to the faith, hope, and charity by which the Formularies profess to be inspired or accompanied; and there are portions of the Liturgy which it is plain cannot be construed plainly without regard to these considerations. For the proof of this, the instance which seems to be most usually cited, and which is conclusive, is the Service for the Burial of the Dead. So far as our knowledge and powers of conception extend, there are and must be at least some persons not excommunicated from the Church who, having lived lives of sin, die impenitent—nay, some who die and perish in the actual commission of flagrant crimes—yet in

Devotional exercises are not as of course evidence of doctrine.

Instance of Burial Service.

1850.

GORHAM v. BISHOP OF EXETER. Judgment.

every case in the Burial Service, as the earth is cast upon the dead body, the Priest is directed to say, and he does say, 'Forasmuch as it hath pleased Almighty God, of His great mercy, to take unto Himself the soul of our dear brother here departed, we therefore commit his body to the ground, earth to earth, ashes to ashes, dust to dust, in sure and certain hope of the resurrection to eternal life;' and thanks are afterwards given:—'For that it hath pleased Almighty God to deliver this our brother out of the miseries of this sinful world;' and this is followed by a collect, in which it is prayed, 'that when we shall depart this life we may rest in God, as our hope is this our brother doth.' The hope here expressed is the same 'sure and certain hope of the resurrection to eternal life' which is stated immediately after the expression, 'It hath pleased Almighty God, of His great mercy, to take to Himself the soul of our brother here departed.'

Absolute expressions to be construed in a qualified sense.

In this Service, therefore, there are absolute expressions implying positive assertions; yet it is admitted that they cannot be literally true in all cases, but must be construed in a qualified or charitable sense—justified, we may believe, by a confident hope and reliance that the expression is literally true in many cases, and may be true even in the particular case in which to us it seems improperly applied. From this and other cases of the like kind, of which there are several in the Services, it seems manifest that devotional expressions, involving assertions, must not, as of course, be taken to bear an absolute and unconditional sense. The meaning must be ascertained by a careful consideration of the nature of the subject, and the true doctrine applicable to it.

Reasons for this.

If expressions in devotional exercises, and exhortations which imply or convey assertions which certainly may be true in some cases, and which we are permitted in charity to hope may be true in the particular cases to which we are directed to apply them, were such that the assertions must be accepted as universal propositions necessarily and unconditionally true in all cases, they would amount to declarations of doctrine; but in the Service for the Burial

1850.

GORHAM v. BISHOP OF EXETER.

Judgment.

of the Dead such implied assertions are clearly not to be taken to be universal propositions; and it is plain that other assertions of the like kind, in other Services, may fall within the same category.

Consideration of the Form for Public Baptism of Infants.

In the office for the administration of the Public Baptism of Infants, the first Rubric states the reason why it is convenient that the administration should be when the most number of people come together. The reasons are stated, 'as well for that the congregation there present may testify the receiving of them that be now baptised into the number of Christ's Church, and also because, in the Baptism of Infants, every man present may be put in remembrance of his own profession made to God in his Baptism.' There is a prayer for the infant, 'that he (being delivered from wrath) may be received into the ark of Christ's Church; and, being stedfast in faith, joyful through hope, and rooted in charity, may so pass the waves of this troublesome world that he may come to everlasting life.' Another prayer that the infant coming to God's holy Baptism may receive remission of his sins by spiritual regeneration; and an exhortation to the congregation, or to those present, not to doubt, but earnestly to believe, that God will favourably receive the present infant, and give unto him the blessing of eternal life. 'Wherefore, we being persuaded of the good will of our heavenly Father towards this infant, and nothing doubting but that He favourably alloweth this charitable work of ours in bringing this infant to his holy Baptism, let us faithfully and devoutly give thanks to Him. And in the prayer which follows it is thus expressed:—'Give Thy Holy Spirit to this infant, that he may be born again, and made an heir of everlasting salvation.' Before the ceremony is performed the sponsors are questioned, and make their answers; and then comes the prayer in which it is said, 'Regard, we beseech Thee, the supplications of this congregation; sanctify this water to the mystical washing away of sin; and grant that this child, now to be baptised therein, may receive the fullness of Thy grace, and ever remain in the number of Thy faithful and elect children.' Thus studiously, in the introductory part of the

1850.

GORHAM v. BISHOP OF EXETER.

Judgment.

Service, is prayer made for the grace of God, that the child may receive remission of his sins by spiritual regeneration;—so firm is the belief expressed that God will favourably receive the infant—so confident is the negation of all doubt, but that God favourably alloweth the charitable work of bringing the infant to Baptism. All this is before the ceremony is actually performed; and after the Baptism has been administered, and during the continuance of the same persuasion, and the same undoubting confidence of a favourable reception and allowance, the Priest is directed to say, 'Seeing now that this child is regenerate, and grafted into the Church, let us give thanks unto Almighty God for these benefits;' and after repeating the Lord's Prayer thanks are thus given:—'We yield Thee hearty thanks that it hath pleased Thee to regenerate this infant with Thy Holy Spirit, to receive him for Thine own child by adoption, and to incorporate him into Thy Holy Church.' The Service is followed by the Rubric:—'It is certain by God's Word that children who are baptised, dying before they commit actual sin, are undoubtedly saved.' And to the short form for the administration of Private Baptism of Children in Houses, after a thanksgiving, 'For that it hath pleased God to regenerate this infant with His Holy Spirit, and to receive him as His own child by adoption, and to incorporate him into His Holy Church,' there is appended a Rubric:—'And let them not doubt but that the child so baptised is lawfully and sufficiently baptised, and ought not to be baptised again. And if the child has not been so baptised by the Minister of the parish, but by some other, the Minister of the parish is to require by whom, with what matter, and with what words the child was baptised; and, if satisfied, he is to certify that all is well done, and that the child, being born in sin, and in the wrath of God, is now, by the laver of regeneration of Baptism, received into the number of the children of God and heirs of everlasting life.

and of Private Baptism of Infants.

Exceptional nature of this Service.

The Baptism thus referred to, and the effect of which is thus stated or expressed, is a Baptism which may have taken place without any prayer for grace or any sponsors;

1850.

GORHAM v. BISHOP OF EXETER. Judgment.

but it seems plainly to have been intended only for cases of emergency, in which death might probably prevent the ceremony, if not immediately performed. For such occasions, and the child dying, the Church holds the Baptism sufficient, and not to be repeated. One Baptism for the remission of sins is acknowledged by the Church. Nevertheless, if the child, which is after this sort baptised, do afterwards live, the Rubric declares the expediency of bringing it into the Church, and appoints a further ceremony, with sponsors. The Private Baptism of Infants is an exceptional case, provided for an emergency, and for which, if the emergency passes away, although there is to be no repetition of the Baptism, a full service is provided. The adult person is not pronounced regenerate until he has first declared his faith and repentance; and before the act of infant Baptism, the child is pledged by his sureties to the same conditions of faith and repentance. And these requirements of the Church, in her complete and perfect Service, ought, upon a just construction of all the Services, to be considered as the rule of the Church, and taken as proof that the same promise, though not expressed, is implied in the exceptional case, when the rite is administered in the expectation of immediate death, and the exigency of the case does not admit of sureties. Any other conclusion would be an argument to prove that none but the imperfect and incomplete ceremony allowed in the exceptional case would be necessary in any case.

Consideration of the Catechism and its bearing on the question.

This view of the Baptismal Service is, in our opinion, confirmed by the Catechism, in which, although the respondent is made to state that in his Baptism he 'was made a member of Christ, the child of God, and an inheritor of the kingdom of heaven,' it is still declared that repentance and faith are required of persons to be baptised; and when the question is asked, 'Why, then, are infants baptised, when, by reason of their tender age, they cannot perform them?' the answer is, not that infants are baptised because of their innocence they cannot be unworthy recipients—cannot present an *obex*, or hindrance, to the grace of regeneration, and are therefore fit subjects

1850.

GORHAM v. BISHOP OF EXETER.

Judgment.

for Divine grace—but 'because they promise them both by their sureties, which promise, when they come to age, themselves are bound to perform.' The answer has direct reference to the condition on which the benefit is to depend, and the whole Catechism requires a qualified, or charitable construction, such as must be given to the expression, 'God the Holy Ghost, who sanctifieth me and all the elect people of God.'

In other Services expressions must receive a qualified construction.

It seems unnecessary for us to go through the other Formularies in the Prayer Book. The Services abound with expressions which must be construed in a charitable and qualified sense, and cannot with any appearance of reason be taken as proofs of doctrine. Our principal attention has been given to the Baptismal Services; and those who are strongly impressed with the earnest prayers which are offered for the Divine blessing, and the grace of God, may not unreasonably suppose that the grace is not necessarily tied to the rite; but that it ought to be earnestly and devoutly prayed for, in order that it may then, or when God pleases, be present to make the rite beneficial.

One of the points left open by the Articles is determined by the Rubric:—'It is certain by God's Word that children which are baptised, dying before they commit actual sin, are undoubtedly saved.' But this Rubric does not, like the Article of 1536, say that such children are saved by Baptism; and nothing is declared as to the case of infants dying without having been baptised.

Private judgment may be exercised on points undetermined.

There are other points of doctrine respecting the Sacrament of Baptism which we are of opinion are, by the Rubrics and Formularies (as well as the Articles), capable of being honestly understood in different senses; and consequently we think that, as to them, the points which were left undetermined by the Articles are not decided by the Rubrics and Formularies; and that upon these points all Ministers of the Church, having duly made the subscriptions required by Law (and taking Holy Scripture for their guide) are at liberty honestly to exercise their private judgment without offence or censure.

Statement of question

Upright and conscientious men cannot in all respects

agree upon subjects so difficult; and it must be carefully borne in mind that the question, and the only question, for us to decide, is, whether Mr. *Gorham's* doctrine is contrary or repugnant to the doctrine of the Church of *England*, as by Law established. Mr. *Gorham's* doctrine may be contrary to the opinions entertained by many learned and pious persons, contrary to the opinion which such persons have, by their own particular studies, deduced from Holy Scripture, contrary to the opinion which they have deduced from the usages and doctrines of the Primitive Church, or contrary to the opinion which they have deduced from uncertain and ambiguous expressions in the Formularies; still, if the doctrine of Mr. *Gorham* is not contrary or repugnant to the doctrine of the Church of *England*, as by Law established, it cannot afford a legal ground for refusing him institution to the living to which he has been lawfully presented.

as to Mr. Gorham.

This Court, constituted for the purpose of advising her Majesty in matters which come within its competency, has no jurisdiction or authority to settle matters of faith, or to determine what ought in any particular to be the doctrine of the Church of *England*. Its duty extends only to the consideration of that which is by Law established to be the doctrine of the Church of *England*, upon the true and legal construction of her Articles and Formularies; and we consider that it is not the duty of any Court to be minute and rigid in cases of this sort. We agree with Sir *William Scott* in the opinion which he expressed in *Stone's* case, in the Consistory Court of *London*—'That if any Article is really a subject of dubious interpretation, it would be highly improper that this Court should fix on one meaning, and prosecute all those who hold a contrary opinion regarding its interpretation.'

Limit of the jurisdiction of the Court.

In the examination of this case, we have not relied on the doctrinal opinions of any of the eminent writers by whose piety, learning, and ability, the Church of *England* has been distinguished; but it appears that opinions, which we cannot in any important particular distinguish from those entertained by Mr. *Gorham*, have been propounded and main-

Opinions of English Divines not distinguishable from those held by Mr. Gorham.

1850.

GORHAM v. BISHOP OF EXETER.

Judgment.

tained, without censure or reproach, by many eminent and illustrious Divines who have adorned the Church from the time when the Articles were first established. We do not affirm that the doctrines and opinions of *Jewel*, *Hooker*, *Usher*, *Jeremy Taylor*, *Whitgift*, *Pearson*, *Carleton*, *Prideaux*, and many others can be received as evidence of the doctrine of the Church of *England;* but their conduct, unblamed and unquestioned as it was, proves, at least, the liberty which has been allowed of maintaining such doctrine.

Jewel.

Bishop *Jewel* writes: "This marvellous conjunction and incorporation with God is first begun and wrought by faith.' . . . 'Afterward the same incorporation is assured unto us, and increased in our Baptism.' (A Reply to Mr. *Harding's* Answer. Works, vol. i., pp. 140, 1. Parker Soc. Edit.)

Hooker.

Hooker writes: 'We justly hold it to be the door of our actual entrance into God's house, the first apparent beginning of life, a seal, perhaps to the grace of election, before received, but to our sanctification here, a step that hath not any before it. (Eccles. Polity, book v., ch. lx., § 3.)

Usher.

Archbishop *Usher*, in reply to the question, 'What say you of infants baptised that are born in the Church; doth the inward grace in their Baptism always attend upon the outward sign?' answers, 'Surely no; the Sacrament of Baptism is effectual in infants only to those, and to all those, who belong unto the election of grace.' (Usher's Catechism. Works, 8th edit. Quarto. London, 1702. p. 367.)

Jeremy Taylor.

Bishop *Jeremy Taylor* says: 'Baptism and its effect may be separated, and do not always go in conjunction; the effect may be before, and therefore much rather may it be after its susception; the Sacrament operating in the virtue of Christ, even as the Spirit shall move.' (Life of our Saviour, part iv., § ix. Discourse vi., of Baptism, part ii., § 2.)

Whitgift.

There was even a time when doctrine to this effect was required to be studied in our Church; and *Whitgift*, by a circular issued in the year 1588, enforced an order made in the year 1587, whereby every Minister under the degree of Master of Arts was required to study and take for his

model the Decades of *Bullinger*, as presented by the Queen and Upper House of Convocation. And there it is declared, among numerous passages of a like tendency, 'The first beginning of our ministry with Christ is not wrought by the Sacraments. In Baptism that is sealed and confirmed to infants which they had before.' (*Bullinger's* Decades, p. 1047, col. 2. London, 1587.)

Hooker.

So with respect to the charitable interpretation of Divine Services, *Hooker* says: 'The Church speaks of infants as the rule of charity alloweth both to speak and to think.' * (Eccles. Pol., book v. ch. 65, § 3.)

Pearson.

Bishop *Pearson* says: 'When the means are used without something appearing to the contrary, we ought to presume of the good effect.' (Exp. of Creed, p. 658. Ed. 1849.)

Carleton.

Bishop *Carleton* says: 'All that receive Baptism are called the chidren of God, regenerate, justified; for to us they must be taken for such in charity, until they show themselves other.' (An Examination, etc., in reply to Montagu.)

Prideaux.

And Bishop *Prideaux* says: 'Baptism only pledges an external and sacramental regeneration, which the Church in charity pronounces that the Holy Spirit renders an inward regeneration.' (Appello Cæsarem, p. 193. London, 1626.)

These opinions are evidence of the liberty which has been enjoyed in the Church.

We express no opinion on the theological accuracy of these opinions, or any of them. The writers whom we have cited are not always consistent with themselves, nor are the reasons upon which they found their positions always valid; and other writers of great eminence, and worthy of great respect, have expressed very different opinions. But the mere fact that such opinions have been propounded and maintained by persons so eminent, and so much respected, as well as by very many others, appears to us sufficiently to prove that the liberty which was left by the

* It is pointed out by Mr. E. F. Moore, in his Report of this case (London, 1852), that there is a slight inaccuracy in the quotation. The passage should run thus: 'We speak of infants as the rule of piety alloweth both to speak and to think.'

1850.

GORHAM v. BISHOP OF EXETER.

Judgment.

Articles and Formularies has been actually enjoyed and exercised by the members and ministers of the Church of *England.*

Sentence of the Court.

The case not requiring it, we have abstained from expressing any opinion of our own upon the theological correctness or error of the doctrine held by Mr. *Gorham*, which was discussed before us at such great length and with so much learning. His Honour the Vice-Chancellor *Knight Bruce* dissents from our judgment; but all the other members of the Judicial Committee who were present at the hearing of the case (those who are now present, and Baron *Parke*, who is unavoidably absent on circuit) are unanimously agreed in opinion; and the judgment of their Lordships is, that the doctrine held by Mr. *Gorham* is not contrary, or repugnant to the declared doctrine of the Church of *England* as by Law established, and that Mr. *Gorham* ought not, by reason of the doctrine held by him, to have been refused admission to the Vicarage of *Brampford Speke.*

Reversal of judgment of the Dean of the Arches.

We shall, therefore, humbly report to her Majesty that the sentence pronounced by the learned Judge ought to be reversed, and that it ought to be declared that the Respondent, the Lord Bishop of *Exeter*, has not shown sufficient cause why he did not institute Mr. *Gorham* to the said Vicarage.

We shall humbly advise her Majesty to remit the cause with that declaration to the Arches Court of *Canterbury*, to the end that right and justice may there be done in this matter, pursuant to the said declaration.

[On the following day (March 9, 1850) an Order in Council was accordingly made upon their Lordships' judgment and report.]

Proceedings in Common Law Courts. April 15, 1850.

[It remains, so far as the history of the case is concerned, briefly to allude to the proceedings in the Common Law Courts, whereby an attempt was made by the Respondent to oust the jurisdiction of the Judicial Committee of the Privy Council, as the Court of Final Appeal, and to substitute in lieu thereof the Upper House of Convocation.

1850.

GORHAM v. BISHOP OF EXETER.

On the 1st day of Easter Term, April 15, 1850, Sir *Fitzroy Kelly*, Q.C., moved in the Queen's Bench for a rule to show cause why a writ of prohibition should not issue to the Dean of the Arches, and to the Archbishop of *Canterbury*, to prohibit them from requiring the Bishop of *Exeter* to institute the Rev. *G. C. Gorham* to the Vicarage of *Brampford Speke*, and also to prohibit the said Dean and Archbishop from instituting the said *G. C. Gorham*, or otherwise carrying into execution her Majesty's Order in Council of March 9, 1850. In support of the motion Counsel contended that, in a matter touching the Crown, an appeal from the Spiritual Court does not lie to the Queen in Council, but lies to the Upper House of Convocation, and that the dispute as to this presentation is such a matter. He relied on the joint effect of Statutes 24 Hen. VIII., c. 12, and 25 Hen. VIII., c. 19, and contended that, according to 24 Hen. VIII., c. 12, a final resort was permitted to the Archbishop's Court in all causes relating to Wills, Matrimony, etc., with exception of causes which touch the King, in which latter cases an appeal lay to the Upper House of Convocation; that, according to 25 Hen. VIII., c. 19, no appeal was to be made to *Rome* in any cause, but all were to be made in the manner limited in the prior Act, as regards Matrimonial and Testamentary suits, with an ulterior appeal, for lack of justice before the Archbishop's Court, to the King in Chancery. Counsel contended that there were excepted from this provision causes which touched the Queen, and that they remained subject to the provisions for appeal to the Upper House of Convocation, as regulated by the Act of 24 Hen. VIII., c. 12.

Motion for a rule to show cause.

Argument of Counsel.

Lord *Campbell* (C. J), in pronouncing the judgment of the Court (Lord *Campbell*, Justices *Patteson*, *Wightman*, and *Erle*), after disputing the position that, in such a case as that before the Court, the Legislature ever gave a power to appeal to the Upper House of Convocation, proceeded to enquire into the force and effect of the Statutes relied on by Sir *Fitzroy Kelly*. Lord *Campbell* held that, by the operation of 24 Hen. VIII., c. 12, appeals to *Rome* were disallowed in all Courts within the spiritual jurisdiction, in causes

Judgment in Queen's Bench, April 25, 1850.

Construction of 24 Hen. VIII., c. 12.

1850.

GORHAM v. BISHOP OF EXETER.

Testamentary, Matrimonial, or causes relating to Tithes and Oblations; that as respecting these three classes of cases, where the matter in contention touched the King, the party aggrieved might apply to the Upper House of Convocation. But that in a suit involving the question whether a Clerk presented by the King to a living was of sound doctrine, the appeal from the Archbishop's Court would still have gone to *Rome*.

and of 25 Hen. VIII., c. 19.

Further that, as all appeals to *Rome* were abolished by 25 Hen. VIII., c. 19, and an appeal in all causes before the Courts of the Archbishops was granted to the King, in the King's Court of Chancery, and that as such appeal was accompanied by no reservation as regards causes touching the King, the interpretation put upon this Statute by Lord *Coke* cannot be impugned—namely, that the Statute expressly prohibits appeals to *Rome* and elsewhere, and enacts that from the Archbishop's Court a further degree in appeals *for all manner of causes* is given to the King in his Chancery, where a commission shall be awarded for the determination of the said appeal and no further. (4 Inst., p. 340.)

Acquiesced in for three centuries

Lord *Campbell* continued: 'In practice such is the construction put upon the Statute for above three centuries, without any doubt being started upon the subject till the present motion was made. During this long period of time, there have been many suits decided in the Archbishops' Courts, in which the Crown has been concerned, respecting Testaments and Tithes, and also of a spiritual nature, if this *Duplex Querela* touches the Queen. We know that in many of these the decision in the Archbishops' Courts was not satisfactory. According to what is now contended for, the appeal ought always to have been to the Upper House of Convocation. But there is no trace of any such appeal ever having been brought. On the contrary, there seems every reason to believe that the appeal has uniformly been to the King in the Court of Chancery, where Commissioners have been appointed, or, in common language, to "the High Court of Delegates."' . . . . . .

'Were the language of Statute 25 Hen. VIII., c. 19, obscure,

1850.

GORHAM v. BISHOP OF EXETER.

instead of being clear, we should not be justified in differing from the construction put upon it by contemporaneous and long-established usage. There would be no safety for property or liberty, if it could be successfully contended, that all Lawyers and Statesmen have been mistaken for centuries as to the true meaning of an old Act of Parliament.

and adopted by the Judges.

'We have been called upon to recollect that the Upper House of Convocation would be a much fitter tribunal than the Judicial Committee to decide such questions, as were in the appeal between Mr. *Gorham* and the Bishop of *Exeter*; but if these, and likewise questions about Marriages, and about Tithes (which must follow the same rule), might be better decided by Divines than by Judges regularly trained in the profession of the Law, and accustomed to administer justice in other Courts, we cannot be influenced in our decision by any view to public policy. Sitting here, we can only interpret the Law, and try to discover the intention of the Legislature from the language of the Statute-Book. Proceeding upon this principle, we all think, that no reason has been shown to invalidate the sentence, on the alleged ground that the Queen in Council and the Judicial Committee had no jurisdiction over the appeal. And none of us entertaining any doubt respecting the legality of the course which has been pursued, we feel bound to say, that a rule to show cause why a prohibition should not issue to stay the execution of the sentence ought not to be granted.'

Consideration of argument based on public policy.

Conclusion.

Rule refused.

Motions to the same effect were also made in the same year in the Courts of Common Pleas, and Exchequer, and with a similar result. (Abridged from 15 Adolphus and Ellis, p. 52.)]

[*For note on this case, see Appendix, Note A.*]

HON. AND REVEREND ROBERT LIDDELL, CLERK, AND OTHERS . . . } APPELLANTS;

AND

CHARLES WESTERTON . . . RESPONDENT.

HON. AND REVEREND ROBERT LIDDELL, CLERK, AND OTHERS . . . } APPELLANTS;

AND

JAMES BEAL . . . . . RESPONDENT.*

On Appeal from the Arches Court of Canterbury.

The term 'ornaments' in the Ornaments Rubric applies and is confined to those articles, the use of which in the services and ministrations of the Church is prescribed by the (1st) Prayer Book of Edward VI. It has no reference to articles not used in the services, but set up in churches as ornaments in the sense of decorations.

The words 'authority of Parliament' in the Ornaments Rubric, do not refer to Canons or Royal Injunctions having the authority of Parliament, and made at an earlier period, but to the Act 2 and 3 Edward VI., and the Prayer Book which it established.

Crosses, as distinguished from crucifixes, when used as mere emblems of the Christian faith, and not as objects of superstitious reverence, may still lawfully be erected as architectural decorations of churches.

A stone structure consisting of a marble slab, and super-altar, supported on stone arches, resting on a stone plinth let into and imbedded in the pavement on which it stands, is not a Communion Table within the meaning of the Canons and the Rubric; it must be

* *Before* the Lord Chancellor (Cranworth); Lord Wensleydale; the Chancellor of the Duchy of Cornwall (Mr. Pemberton Leigh); Sir John Patteson; Sir William H. Maule. Privy Councillors specially summoned: Archbishop of Canterbury (Sumner); Bishop of London (Tait).

of wood and moveable, and capable of being covered with a cloth.

Credence Tables are adjuncts to a Communion Table, and may be lawfully used.

Embroidered cloths for the Communion Table may be used during the time of Divine Service.

Embroidered linen and lace may not be used during the administration of the Holy Communion, such articles not being consistent with the meaning of the words in the Rubric, 'a fair white linen cloth.'

Feb. 9–16, 1857.

Statement

THESE cases, the facts whereof will appear at length in the judgment, came in the first instance before the Judge in the Consistory Court of London (Dr. Lushington). The two cases so closely resembled each other that it was deemed convenient they should be argued together, and should be decided by one and the same judgment. The case of *Westerton* v. *Liddell*, or as it is more popularly known as the case of St. Paul's, *Knightsbridge*, was a suit brought by Mr. *Charles Westerton*, one of the Churchwardens of the Church, against the Incumbent, Mr. *Liddell*, and others, praying a faculty for the removal of—

The High Altar, with the cross elevated thereon or attached thereto;

The gilded candlesticks and candles;

The Credence Table; and

The several divers coloured Altar coverings.

The case of *Beal* v. *Liddell*, known as the St. *Barnabas'* case, was somewhat different in form, but substantially to the same effect.

It was an application for a monition to the Churchwardens to remove the articles objected to, namely:

The Altar and the articles, as in the case of St. Paul's.

And it was further complained—

That the cross on the Altar was decorated with jewels;

That there was a wooden screen with a large cross fixed thereon;

That there were brazen gates, with locks thereon, separating the Chancel from the Church;

That the linen cloth for Communion was ornamented with lace and embroidery.

1857.

LIDDELL v. WESTERTON and LIDDELL v. BEAL.

Statement.

Also a prayer was made that the Court would direct the Ten Commandments to be put up at the east end of the Chancel.

The two causes were argued together, Dr. *Bayford* appearing for Mr. *Westerton* and Mr. *Beal*, and Drs. *Phillimore* and *Swabey* for Mr. *Liddell*. Judgment was pronounced by Dr. *Lushington* on December 5, 1855.

In the case of St. *Paul's* the learned Judge decreed a faculty for the removal of—

The Credence Table;

All the cloths used in the Church for covering the Communion Table, and to substitute one only covering of silk, or other decent stuff.

In the case of St. *Barnabas'* the learned Judge decreed monition to issue to remove—

The stone Altar, and to substitute a moveable table of wood;

The Credence Table;

The cross on the Altar, and also the cross on the screen;

The coverings of the structure used as a Communion Table, and to substitute one only covering of silk, or other decent stuff;

Any covering ornamented with lace or embroidery when the Sacrament is administered; and, further, to substitute a fair linen cloth in lieu thereof; and to cause the Ten Commandments to be set up at the east end of the Church—i.e. the Chancel.

The other points dealt with in the judgment were the gilded candlesticks and candles at St. *Paul's*, and the brazen gates at St. *Barnabas'*.

As to the candlesticks and candles, the learned Judge held that all lighted candles on the Communion Table are contrary to Law, except when they are lighted for the purpose of giving necessary light; yet that candlesticks and unlighted candles may lawfully be retained.

The brazen gates at St. *Barnabas'* were disapproved of, but were not held to be illegal.

From this decision Mr. *Liddell* and his co-Defendants

1857.

LIDDELL v. WESTERTON and LIDDELL v. BEAL. Statement.

appealed to the Arches Court of *Canterbury*, and on December 20, 1856, Sir *John Dodson*, the Dean of the Arches, delivered judgment affirming the rulings of Dr. *Lushington*, and condemning the Appellants in costs. There was no appeal as to the candlesticks, candles, or brazen gates.

From this decree Mr. *Liddell* and his co-Defendants appealed to her Majesty in Council, praying that the sentences of the Arches and Consistory Courts might be reversed, and that the Respondents to the Appeal might be condemned in costs. Messrs. *Westerton* and *Beal* prayed, on the other hand, that the order appealed from might be affirmed with costs.

Sir *Fitzroy Kelly*, Q.C., and Dr. *Phillimore* for the Appellants;

Dr. *Bayford* and Mr. *Stephens* for the Respondents;

having been heard, judgment was reserved to March 21, 1857, when it was delivered by the

CHANCELLOR of the DUCHY of CORNWALL (Mr. *Pemberton Leigh*, since Lord *Kingsdown*).

March 21, 1857.

Judgment.

These cases came before the Court by Appeal from two orders in distinct suits, directing the removal of various articles of Church furniture: in the one case from the District Church, or Chapel, of St. *Paul's, Knightsbridge*, and in the other from the Chapel of Ease of St. *Barnabas, Pimlico*. Although there is some distinction between the circumstances of the two cases, they involve the same principles; they were included in one argument at this Bar, and will be conveniently disposed of in one judgment.

Facts in respect of St. Paul's.

It appears that the District Church of St. *Paul's* was erected by private subscription; that the income by which it is supported is derived from the rent of pews; that Mr. *Liddell* is the Incumbent, and Mr. *Horne* and Mr. *Westerton* the two Churchwardens. The two Churchwardens differed as to the propriety of certain ornaments of the Church, and in Hilary Term, 1855, the suit out of which the present

1857.

LIDDELL v. WESTERTON and LIDDELL v. BEAL. Judgment.

appeal arises was instituted in the Consistory Court of *London*, by Mr. *Westerton* against Mr. *Horne* and Mr. *Liddell*, who are now the Appellants.

The citation called upon the Appellants to show cause why a faculty should not be granted for removing the Altar, or High Altar, and the cloths used for covering the same, together with the wooden cross elevated thereon, and affixed thereto, as well as the candlesticks thereon, together with the Credentia, Preparatory Altar, or Credence Table, used in the said Church or Chapel, and for substituting in lieu and stead thereof a decent and proper table for the administration of the Lord's Supper and Holy Communion, and a decent cloth for the covering thereof.

Answer of Defendants.

The answer of the Defendants alleges that the article of Church furniture called in the citation an 'Altar,' or 'High Altar,' is in fact, and according to the true and legal interpretation of the 82nd of the Constitutions and Canons of *England* and *Ireland*, as by Law established, *mensa congrua et decens*, or a convenient and decent table, such as is required by Law for the celebration of the Holy Communion, and denies that the wooden cross is inconsistent with the Laws, Canons, Customs, and Constitutions of the said Church. In subsequent passages of the answer this Table is always spoken of as the Altar, or Communion Table, and it is alleged that the said Altar, or Communion Table, and the platform on which the same is raised, the wooden cross attached thereto, the gilded candlesticks, and the said side-table, or Credence Table, were placed in the same Church as the same now exist, and formed part of the furniture thereof at the time of the consecration of the said Church, and of the furniture thereof, by the Lord Bishop of *London*, on May 30, 1843.

Description of Table in St. Paul's.

Their Lordships understand that this Table, described as an Altar, or Communion Table, is made of wood, and is not attached to the platform, but merely stands upon it; that it is placed at the east end of the Church, or the Chancel, according to the ordinary usage as to Communion Tables; that at the end nearest the wall there

is a narrow ledge raised above the rest of the Table; that upon this ledge, which is termed the 'super-altare,' stand the two gilded candlesticks, which are moveable, and between them the wooden cross, which is let into and fixed in the super-altare, so as to form part of what is thus described as the Altar, or Communion Table.

Judgment of Court below.

The judgment complained of has not ordered the removal of the Table or of the candlesticks, but only of the cross, the Credence Table, and the cloths. There is no appeal against this order, so far as it permits the Table and candlesticks to remain, and it is therefore not open to their Lordships to consider the judgment with reference to the articles not ordered to be removed.

Wishes of the parishioners.

The evidence as to the wishes of the parishioners upon this subject appears to their Lordships to show (what in such a case might perhaps be expected) that, with respect to these ornaments, there are many persons of great respectability who, from conscientious motives, are strongly attached to them; many of equal respectability who, from motives equally conscientious, feel an invincible repugnance to them; and some, it may be hoped not a few, who, whatever opinion they may form of their intrinsic value, consider them as of no importance whatever in comparison with Christian charity and concord, and who, whether they approve, or whether they disapprove of them, would infinitely rather sacrifice their individual feelings and opinions than secure their triumph at the expense of disturbing the Church of which they are members.

Facts in respect of St. Barnabas.

With respect to the appeal of '*Liddell* and *others* v. *Beal*,' St. Barnabas is a chapel of ease within the District Chapelry of St. *Paul*, of which the Curates are appointed by Mr. *Liddell*. In this case both the Chapelwardens agree with Mr. *Liddell* as to the ornaments in question. On January 17, 1855, a monition was issued against them, at the instance of Mr. Beal, an inhabitant of the District Chapelry of St. Barnabas, by which they were monished to remove from the said Chapel the roodscreen and brazen gates, together with the cross elevated and fixed on the said

1857.

LIDDELL v. WESTERTON and LIDDELL v. BEAL.

Judgment.

screen, and also the stone Altar and cloths now used for covering the same, and the cross ornamented with jewels elevated thereon, and fixed thereto, with the candlesticks and candles placed thereon, and also the marble Credentia, Preparatory Altar, or Credence Table, and to substitute in lieu and stead thereof a decent table for the administration of the Lord's Supper and Holy Communion, and a decent covering thereto, and to set up on the east end of the Chancel of the said Chapel the Ten Commandments, as by the Laws, Canons, Institutions, and Customs of the United Church of *England* and *Ireland* is prescribed.

Answer of Defendants in Court below.

The answer admits that between the Chancel and Nave of the Church there is a screen of carved wood, on the summit whereof a wooden cross is affixed. It admits, in substance, the existence of the stone Table, or Altar, with the metal cross attached thereto, and it insists that the article of furniture so described is *mensa congrua et decens* within the meaning of the Canons, and is such a Communion Table as is required by them for the celebration of the Holy Communion. It admits the use of various cloths differing in colour from each other, as coverings of the Communion Table at different seasons, and that the covering used on the said Altar, or Communion Table, at the time of the administration of the Holy Communion is of worked and embroidered white linen, ornamented and enriched and bordered at the ends with elaborately worked lace, and that the other articles of linen used in the said office are also decorated and enriched with white lace. It denies that the Credence Table is attached to the Chancel, and alleges that the same is a moveable table, necessary and convenient for the decent celebration of the Holy Communion, according to the Rubrics of the Book of Common Prayer. The answer then alleges that these ornaments existed in the Church when it was consecrated in 1850, and that the services are attended by large and devout congregations, whose religious feelings would be violated by their removal.

Judgment of Court below.

The judgment complained of has ordered the Church or Chapelwardens of St. *Barnabas'* to remove the present

structure of stone used as a Communion Table in the said Church, and to provide instead thereof a moveable table of wood; to remove the Credence Table; to remove the cross on the screen, as also the cross on, or near, the present structure used as a Communion Table; to take away all the cloths at present used in the said Church, or Chapel, for covering the structure now used as a Communion Table during the time of Divine Service, and to provide and substitute in place of the said cloths one covering only for the Communion Table of silk, or other decent stuff; and further to remove any cover used at the time of the ministration of the Sacrament, worked or embroidered with lace, or otherwise ornamented, and to substitute a fair white linen cloth, without lace or embroidery, or other ornament, to cover the Communion Table at the time of the ministration of the Sacrament, and to cause the Ten Commandments to be set up on the east end of the Church, in compliance with the terms of the Canon. As to the order directing the Ten Commandments to be set up, there is no appeal.

When this case came by appeal before the Dean of the Arches, some additional evidence was given with respect to the assent of the Bishop of *London* to the use of these ornaments before the Chapel was consecrated. But it does not appear to their Lordships to be necessary to go into this part of the case.

Their Lordships will deal with each of the articles which are the subject of appeal separately; and,

First, as to Crosses.

First. With respect to the crosses, the point to which by far the greater part of the argument at this bar was addressed.

No distinction was taken by the Courts below between the different crosses which are the subject of appeal; between the crosses on what are termed the Altars, or Communion Tables, both at St. *Paul's*, and St. *Barnabas'*, and the cross on the Chancel screen in St. *Barnabas'*. The learned Judges have treated them as being all subject to the same considerations, and have ordered them all to be removed as illegal ornaments. But though both Judges

1857.

LIDDELL v. WESTERTON and LIDDELL v. BEAL. Judgment.

arrived at the same conclusion, there is some difference between the reasons assigned for their decisions.

Dr. *Lushington* seems to have held that the question was, according to the Rubric of the present Prayer Book, what ornaments could be shown to have been in the churches in the second year of the reign of *Edward* VI., by authority of Parliament, according to the Rubric of the present Prayer Book, whatever those words, according to their true construction, might import.

Sir *John Dodson*, on the other hand, considered the question to depend on the effect of certain Royal Injunctions, and an Act of Parliament,* against the use of images, amongst which he considered crosses to be included.

It will be necessary to examine both these grounds of decision with the attention and respect which are due to the eminent persons who have adopted them; and, first, as to the effect of the Rubric.

In dealing with this question it is necessary to remember that there were many crosses, some with, some without, the image of the Saviour, which were in use in the Roman Catholic Ritual; altar crosses, processional crosses, funeral crosses, and others, as well as painted or carved representations of the cross not used in the services, but set up as architectural decorations of churches; and the question is whether the Rubric applies to the latter class.

Rubric which applies.

The Rubric is in these words:—'And here is to be noted, that such ornaments of the Church, and of the Ministers thereof, at all times of their ministration, shall be retained, and be in use, as were in this Church of *England*, by the authority of Parliament, in the second year of the reign of King *Edward* VI.'

Dr. *Lushington* was of opinion that, by the true construction of these words, reference must be had to the Act of 2 and 3 *Edward* VI. and the Prayer Book, which it es-

* The Injunctions referred to are those issued by Edward VI., in 1547. Their general object was the abolition of images and other ornaments not essential to divine worship, which had been abused. The Act of Parliament is 3 & 4 Edward IV., c. 10, abolishing all books and images tending to the maintenance of superstition.

1857.

LIDDELL v. WESTERTON and LIDDELL v. BEAL.

Judgment.

tablished * for the purpose of determining what ornaments were thereby sanctioned, but he was perplexed by the difficulty, that although there were words in that Prayer Book, describing the ornaments of the Ministers, there were none which applied to ornaments of the Church, in his understanding of this expression.

Meaning of the 'Ornaments' Rubric.

Their Lordships, after much consideration, are satisfied that the construction of this Rubric which they suggested at the hearing of the case is its true meaning, and that the word 'ornaments' applies, and in this rubric is confined, to those articles the use of which, in the services and ministrations of the Church, is prescribed by the Prayer Book of *Edward* VI.†

Meaning of ornaments generally.

The term 'ornaments' in ecclesiastical law is not confined, as by modern usage, to articles of decoration or embellishment, but it is used in the larger sense of the word 'ornamentum,' which, according to the interpretation of *Forcellini's* Dictionary, is used 'pro quocumque apparatu seu implemento.' All the several articles used in the performance of the services and rites of the Church are ornaments. Vestments, books, cloths, chalices and patens, are amongst Church ornaments; a long list of them will be found extracted from *Lyndwood*, in Dr. *Phillimore's* edition of '*Burn's* Ecclesiastical Law.' In modern times organs and bells are held to fall under this denomination.

'Ornaments' of First Book of Edward VI.

When reference is had to the First Prayer Book of *Edward* VI. with this explanation of the term 'ornaments,' no difficulty will be found in discovering, amongst the articles of which the use is there enjoined, ornaments of the Church as well as ornaments of the Ministers. Besides the vestments differing in the different services, the Rubric provides

* That is the First Prayer Book.

† Dr. Lushington and Sir J. Dodson had taken it as admitted that crosses were 'ornaments.' The Committee give their reasons in the following paragraph for holding the contrary opinion:—They limit 'ornaments in use by authority of Parliament in the second year of the reign of Edward VI.' to ornaments prescribed by 2 & 3 Edw. VI., c. 1, thereby excluding any that may have been legally in use before, even although not prohibited by that statute.

1857.

LIDDELL v. WESTERTON and LIDDELL v. BEAL. Judgment.

for the use of an English Bible, the new Prayer Book, a Poor Man's box, a chalice, a corporas, a paten, a bell, and some other things. That these articles were included in the term 'ornaments of the Church' at the period in question is clear, from two documents nearly contemporaneous, one before and the other after the establishment of the First Prayer Book. In a letter of the Council to *Cranmer*, dated April 30, 1548 (to be found in Strype's 'Memorials of Cranmer,' vol. ii., p. 90), they complain of the conduct of certain churchwardens, who sent away their chalices, crosses of silver, bells, and other ornaments of the church; and in a Commission in 1552 the Commissioners are enjoined to leave in every church or chapel of common resort, one, two, or more chalices or cups, according to the multitude of people in every such church or chapel, and also such other ornaments, as by their discretion shall seem requisite for the Divine Service in every such place for the time. If reference be now made to the alterations in these matters introduced by the Second Prayer Book of *Edward* VI. and the subsequent Rubric to the Prayer Book of *Elizabeth*, the meaning will be sufficiently clear. The Second Prayer Book forbids the use of different vestments by the Priest in the performance of the different services, and enjoins the use of a surplice only; and does not expressly mention the paten, chalice, and corporas. After the overthrow of Protestantism by Queen *Mary*, and its restoration on the accession of Queen *Elizabeth*, a great controversy arose between the more violent and the more moderate Reformers as to the Church Service which should be re-established, whether it should be according to the First or according to the Second Prayer Book of *Edward* VI. The Queen was in favour of the First, but she was obliged to give way, and a compromise was made, by which the services were to be in conformity with the Second Prayer Book, with certain alterations, but the ornaments of the church, whether those worn or those otherwise used by the Minister, were to be according to the First Prayer Book. In conformity with this arrangement the Act 1 Eliz., cap. 2, was passed, by which the use of the Second Prayer Book

Of Second Book of Edward VI.

1857.

LIDDELL v. WESTERTON and LIDDELL v. BEAL. Judgment.

was established, but it was provided 'that such ornaments of the church and of the Ministers thereof shall be retained and be in use, as was in this Church of *England* by authority of Parliament in the 2nd year of the reign of King *Edward* VI. until other order shall be therein taken by the authority of the Queen's Majesty,' with such advice as therein mentioned.

Of Book of Elizabeth.

The Rubric to the new Prayer Book, framed to express the meaning of this proviso, is in these words:—'And here is to be noted that the Minister, at the time of the Communion, and at all other times of his ministration, shall use such ornaments in the church as were in use by authority of Parliament in the 2nd year of the reign of King *Edward* VI., according to the Act of Parliament set in the beginning of this book.' Here the term 'ornaments' is used as covering both the vestments of the Ministers and the several articles used in the services; it is confined to such things as in the performance of the services the Minister was to use.

It will be observed that this Rubric does not adopt precisely the language of the statute, but expresses the same thing in other words. The statute says 'such ornaments of the church and of the Ministers shall be retained and be in use;' the Rubric, 'that the Minister shall use such ornaments in the church.'

The Rubric to the Prayer Book of January 1, 1604, adopts the language of the Rubric of *Elizabeth*. The Rubric to the present Prayer Book adopts the language of the statute of *Elizabeth*; but they all obviously mean the same thing, that the same dresses and the same utensils or articles which were used under the First Prayer Book of *Edward* VI. may still be used. None of them, therefore, can have any reference to articles not used in the services, but set up in churches as ornaments, in the sense of decorations.

Meaning of the second year of Edward VI.

It was urged at the bar that the present Rubric, which refers to the second year of *Edward* VI., cannot mean ornaments mentioned in the First Prayer Book, because, as it is said, that Act was probably not passed, and the Prayer Book was certainly not in use till after the

1857.

LIDDELL v. WESTERTON and LIDDELL v. BEAL. Judgment.

expiration of the second year of *Edward* VI., and that, therefore, the words 'by authority of Parliament' must mean by virtue of Canons or Royal injunctions having the authority of Parliament made at an earlier period. There seems no reason to doubt that the Act in question received the Royal assent in the 2nd year of *Edward* VI. It concerned a matter of great urgency, which had long been under consideration, and was the first Act of the session; it passed through one House of Parliament on January 15, 1549, N.S.; and the other on the 21st of the same month; and the 2nd year of the reign of *Edward* VI. did not expire till January 28. In the Act of the 5th and 6th *Edward* VI., c. i., sec. 5, it is expressly referred to as the Act 'made in the second year of the King's Majesty's reign.' Upon this point, therefore, no difficulty can arise. It is very true that the new Prayer Book could not come into use until after the expiration of that year, because time must be allowed for printing and distributing the books; but its use and the injunctions contained in it were established by authority of Parliament in the second year of *Edward* VI., and this is the plain meaning of the Rubric.

Mr. Stephens' argument as to validity of Canons of Henry VIII.

It was contended by Mr. Stephens, in a very able argument, that the Canons passed in the reign of *Henry* VIII. had no Parliamentary authority in the reign of *Edward* VI., for that the true meaning of the statutes relating to the subject passed in the reign of *Henry* VIII. is, that they provide for the review of the existing Canons by Commissioners appointed by the King, and give authority only to those Canons in the meantime—i.e. during the continuance of the Commission—that the Commissioners never made any report; that the Commissions determined by the death of King *Henry* VIII.; and that the Parliamentary sanction given to the Canons ended at the same time. If it were necessary to determine this point, their Lordships think this argument might deserve serious consideration, although it is contrary to the general impression, which has prevailed upon the subject. As, however, their Lordships entertain no

doubt whatever as to the meaning of the words 'authority of Parliament,' used in the Rubric, it is useless to enter further into the question.

Their Lordships therefore are of opinion that, although the Rubric excluded all use of crosses in the services, the general question of crosses not used in the services, but employed only as decorations of churches, is entirely unaffected by the Rubric. If crosses of the latter description were in use in the second year of *Edward* VI., they derive no protection from the Rubric; if they were lawfully in use they are not excluded by the Rubric, though they might not have the sanction of the authority of Parliament.

Are crosses images?

The next question is, Are crosses forbidden under the term 'images' in the Injunctions and Act of Parliament relied on by Sir *John Dodson*? * It is laid down in the judgment, and was strongly pressed at the bar, that the term 'images' may apply to crosses; that *imagines crucis* are often mentioned, as well as *imagines crucifixi et sanctorum*; that the cross, at the accession of *Henry* VIII., was itself an object of superstitious worship in the Roman Catholic Church; that two services in its honour are found in the Roman Catholic Missal; that it was abused like other images, and was abolished like other images. It is impossible to deny that crosses are frequently spoken of amongst images. The Articles concerning laudable ceremonies, published by *Henry* VIII., in 1536, under the head 'And first of images,' declare that the worship is 'only to be done' to God, and in His honour, although it be done before the images, whether it be of Christ, of the cross, of our Lady, or of any other saint beside.' (Lloyd's Formularies of Faith, p. 28.) And passages to the same effect are to be found in other contemporary documents. But the result of the best examination which their Lordships have been able to make is, that the term 'image,' though it may be extended by the context, is generally to be understood in a more limited sense.

* The Injunctions of 1847 and the Act 3 & 4 Edward VI., c. 10.

1857.

LIDDELL v. WESTERTON and LIDDELL v. BEAL.

Judgment.

Although it is true that crosses have been abused as well as crucifixes and images of saints, it must be remembered that there is a wide difference between the cross and the images of saints, and even, though in a less degree, between a cross and a crucifix. A cross was used as a symbol of Christianity two or three centuries before either crucifixes or images were introduced; it was used for ages before the Reformation, and has continued ever since to be used as an ensign of honour, as an ornament both of buildings and persons, ecclesiastical and civil, public and private, without any relation to superstitious or even to religious usages. That this was the view taken by some of the early Reformers will sufficiently appear by a letter of Cassander, to be presently mentioned. The distinction between the cross and images is still more marked. Though in process of time the cross was transformed into the crucifix, or itself became an object of adoration, it was the memorial of a real event, the most momentous that ever happened in the history of the world, and was worshipped, however erroneously, only in connection with that Being to whom all worship is due. The images of the saints, on the other hand, were often connected (to use the language of some of the writers to which we must refer) with 'lying legends and feigned miracles;' and it might well be that the worship and invocation of saints should be abolished, and the images connected with that practice be swept away, while the cross was retained with the faith of which it was an emblem. The important question, however, is not what it was reasonable to do, but what in fact was done, by the regulations for the removal of images.

Difference between a cross and an image.

The first set of injunctions of *Edward* VI. were issued in the first year of his reign, some time, as it was said, between the months of May and August 1547. (1 Cardwell, Doc. Ann., No. ii., p. 4.) By these injunctions the Clergy are required to teach the people that all the usurped authority of the Bishop of *Rome* has been justly abolished. They are not to 'extol any images, relics, or miracles for any superstition or lucre, nor allure the people by any enticements to the pilgrimage of any saint

Injunctions of Edward VI.

or image;' they are to teach 'that works devised by men's fantasies, besides Scripture, as wandering to pilgrimages, offering of money, candles, or tapers, or relics, or images, or kissing or licking of the same, praying upon beads or such like superstitions, have not only no promise of reward in Scripture for doing of them, but contrariwise, great threats, and maledictions of God, for that they be things tending to idolatry and superstition.' The third item of these injunctions is in these words:—'That such images as they know in any of their cures to be or have been so abused with pilgrimage, or offerings of anything made thereunto, or shall be hereafter censed unto, they (and none other private persons) shall, for the avoiding of that most detestable offence of idolatry, forthwith take down, or cause to be taken down, and destroy the same; and shall suffer from henceforth no torches, or candles, tapers, or images of wax to be set afore any image or picture, but only two lights upon the High Altar, before the Sacrament, which, for the signification that Christ is the very true Light of the world, they shall suffer to remain still; admonishing their parishioners, that images serve for no other purpose but to be a remembrance, whereby men may be admonished of the holy lives and conversation of them that the said images do represent; which images if they do abuse for any other intent, they commit idolatry in the same, to the great danger of their souls.'

It is clear that in this passage images are spoken of as images of persons, and that only such images of any kind as had been or should be the object of superstitious worship were to be removed; and it shows that the High Altar was to remain as it had been before, with lights upon it, before the Sacrament. The nineteenth item provides 'that no person shall from thenceforth alter, or change the order or manner of any Fasting Day that is commanded, nor of Common Prayer, or Divine Service, otherwise than is specified in these injunctions, until such time as the same shall be otherwise ordered and transposed by the King's authority.' The twenty-first provides for reading certain portions of Scripture in English in the time of High

1857.

LIDDELL v. WESTERTON and LIDDELL v. BEAL. Judgment.

Mass. The twenty-eighth is in these terms:—'Also that they shall take away, utterly extinct, and destroy all shrines, covering of shrines, all tables, candlesticks, trindles or rolls of wax, pictures, paintings, and all other monuments of feigned miracles, pilgrimages, idolatry, or superstition; so that there remain no memory of the same in walls, glass windows, or elsewhere within their churches or houses. And they shall exhort all their parishioners to do the like within their several houses. And that the churchwardens, at the common charge of the parishioners in every church, shall provide a comely and honest pulpit to be set in a convenient place within the same, for the preaching of God's Word.' If this section be read with those which precede it, it is obvious that it applies only to articles which had been the object of feigned miracles, pilgrimages, idolatry, and superstition, and at all events could not include either crosses or images, which had not been so abused, and which by the previous injunctions were to be retained; and, as regards the cross itself, its use was not only permitted, but enjoined, as the old services which required it were retained. The section could not mean that all candlesticks should be removed from churches, for two were to be retained on the High Altar. Still less could it mean that all tables, candlesticks, and pictures should be removed from private houses.

Visitation Articles.

That this is the true meaning of the injunctions is further shown by the Articles of Visitation, in which enquiry was to be made whether they had been obeyed.

The Article applicable to this subject is as follows:—'Whether there do remain not taken down in your churches, chapels, or elsewhere, any misused images, with pilgrimages, cloths, stones, shoes, offerings, kissings, candlesticks, trindles of wax, and such other like; and whether there do remain not delaied and destroyed any shrines, coverings of shrines, or any other monument of idolatry, superstition, and hypocrisy.' (1 Cardwell, Doc. Ann., p. 25.) Another enquiry is, 'Whether they which have spoken or declared anything for the setting forth of pilgrimages,

feigned relics, images, or any such superstition have not openly recanted the same.' (*Ibid.*, p. 27.)

The object of these injunctions appears to have been to abolish the worship or superstitious veneration of images and relics; but they left entirely untouched the Service of High Mass, and made no declaration as to the nature of the Sacrament then administered. Indeed, a subsequent proclamation of the King, dated December 27, 1547, forbids any discussion of the doctrine of the Real Presence, until the King should define the doctrine.

First proclamation.

On Feb. 6, 1547, N.S., the King issued a Proclamation (*Ibid.*, p. 43) by which punishment was denounced against such persons as should of their private mind 'omit, leave done, change, alter, or innovate any order, rite, or ceremony commonly used and frequented in the Church of *England*, and not commanded to be left done' in the reign of the late King, other than such as his Highness, King *Edward VI.*, in manner therein mentioned, had ordered, or should order to be altered; provided always that no man should be punished for omitting certain particular observations therein mentioned, and, amongst others, for 'creeping to the Cross.'

Creeping to the Cross.

The ceremony of creeping to the Cross seems to be explained by a constitution of *Giles de Bridport*, Bishop of *Sarum*, A.D. 1256 (Wilkin's Concilia, vol. i., p. 713), which provides that on the day of our Saviour's Passion all the parishioners 'shall come to worship the Cross, and to offer according to their inclination.' In *Strype's* 'Memorials of *Cranmer*' the practice is alluded to in these terms:—'And because creeping to the Cross was a greater abuse than any of the other (for there the people said, '*Crucem tuam adoramus, Domine*;' and the ordinal saith, '*Procedant clerici ad crucem adorandam nudis pedibus;*' and it followeth in the said ordinal, '*Ponatur crux ante aliquod altare, ubi a populo adoretur,*' which by the Bishop's book, entitled 'A Necessary Instruction,' is against the Second Commandment); therefore he (the Archbishop) desired of the King that the creeping to the Cross might also cease hereafter. (Strype's

1857.

LIDDELL v. WESTERTON and LIDDELL v. BEAL. Judgment.

Memorials, vol. i., p. 299.) It is plain, therefore, that up to this time the use of the Cross was permitted, though misused images were in the strongest and most general terms forbidden.

Second Proclamation.

On February 21, 1548, N.S., however, another Proclamation was issued, upon the authority of which it is contended that all images, including crosses, were to be taken down. It is in these terms:—'After our right hartye recommendations to your good Lordship: where now of late in the King's Majestie's Visitation, amonge other goodly injunctions commanded to be generally observed throughe all partes of this his Highnes realme, one was set forthe for the taking downe of all such images, as had at any tyme been abused with pilgrimages, offerings, or censinges; albeit that this said injunction hathe in many partes of the realme been well and quyetlye obeyed and executed, yet in many other places much stryfe and contentyon hathe rysen and dayly ryseth, and more and more encreaseth about the execution of the same, some men being so superstytyous, or rather wylfull, as they would by theyr good wylles, retayne all suche images styll, although they have been moost manyfestly abused, and in some places also the images whiche, by the saide injunctions, were taken downe, be now restored and set up again, and almoste in every place ys contentyon for images, whether they have been abused or not; and whiles these men go about on both sides contentyouslye to obtaine theyr mindes, contending whether this or that image had been offered unto, kyssed, censed, or otherwise abused, partyes have in some places been taken in suche sorte, as further inconvenience is very like to ensue, yf remedie be not provided in tyme; considering therefore that allmost in no places of this realme ys any sure quyetness, but where all images to be hooly taken away and pulled downe already, to the intent that all contentyon in everye parte of this realme, for this matter may be clerely taken away, and that the lyvely images of Christ shoulde not contende for the deade images, which be things not necessary, and without which the Churches of Christ contynued most godlye many yeres. We have

thought good to signify unto you that his Highnes pleasure, with the advyse and consent of us the Lord Protectour and the rest of the Counsell, ys, that immediately upon the sight hereof with as convenyent diligence as you maye, you shall not only gyve ordre, that all the images remayninge in any churche or chappell within your diocese be removed and taken away, but also by your letters signify unto the reste of the Busshopes within your provynce his Highnesse pleasure for the lyke order to be gyven by them and every of them, within their several dioceses; and in the execution thereof we requyre bothe you and the reste of the Busshopes foresayd, to use suche foresight as the same may be quyetlye donne with as good satisfaction of the people as may be.' (1 Cardwell's Doc. Ann., p. 47.)

Its limited effect.

It appears to their Lordships that this Proclamation applies only to such images as are the subject of the former Proclamation, and that the intention was not to introduce within the prohibition articles of a description not before forbidden, but to do away with the distinction between images which had been, and images which had not been abused. This Proclamation any more than the former could not apply to crosses, for the old services were still in use. The Act, establishing the new Book of Common Prayer, did not pass, until near a twelvemonth afterwards, and that Act itself provides that for a certain time after its date the old ceremonies should continue.

Confirmed by 3rd Proclamation.

This is confirmed by the letter of the Council sent to all those preachers which the King's Majesty had licensed to preach, issued on May 13, 1548, by which the clergymen were enjoined to teach the people on the one hand 'to flee all old erroneous superstitions, as the confidence in pardons, pilgrimages, beads, religious images, and other such of the Bishop of *Rome's* traditions and superstitions, with his usurped power, the which things be here in this realm most justly abolished;' and then, on the other hand, straitly to rebuke those who 'will take upon them to run before they be sent, to go before the rulers, to alter and change things in religion without authority.' It is declared that it 'is not a private man's duty to alter ceremonies, to

1857.

LIDDELL v. WESTERTON and LIDDELL v. BEAL.

Judgment.

3rd and 4th Edward VI.

innovate orders in the Church, nor yet is it not a preacher's part to bring that into contempt and hatred, which the Prince doth either allow or is content to suffer.' (1 Cardwell, Doc. Ann., p. 65.)

The next authority relied on* is the 3rd and 4th *Edward* VI., c. 10, intituled 'An Act for the abolishing and putting away divers Books and Images.' The object of this Act was to enforce the observance of the new Prayer Book, and of former orders with respect to images. After enacting that all Antiphoners, and other books of the services of the Church, other than the authorised Prayer Book, shall be utterly abolished, it proceeds to enact, that if any person shall have such books in his possession, or any images of stone, timber, alabaster, or earth, graven, carved, or painted, which heretofore have been taken out of any church or chapel, or shall stand in any church or chapel, and do not, before the last day of June then next ensuing, deface and destroy the images, and deliver up the books for the purpose of being destroyed, such persons failing to deliver up the books shall be subject to certain penalties, but it inflicts no penalty on persons failing to deface or destroy the images, nor does it in terms order their destruction or defacement. No doubt, however, it implies that to retain them is illegal, but it relates, in their Lordships' opinion, to the destruction of images already ordered to be removed, but which either had not been removed, or, having been so, were still retained for private veneration and worship; and the images so described, for the reasons already assigned, cannot include crosses. The letter of *Edward* VI. to *Cranmer*, directing him to give effect to this Act, refers only to books, saying nothing as to images. Thus matters remained as regarded the law upon the subject now in question, until the end of the reign of *Edward* VI.; for although most important alterations were made in the order of Divine Service, by the 5th and 6th *Edward* VI., c. 2, and the new Prayer Book† thereby introduced,

* That is, to show that crosses are images.

† The Second Prayer Book of Edward VI.

they apply only, like the former Prayer Book, to that which was to be used in the services and rites of the Church.

But although their Lordships are of opinion that the Law did not require the removal from churches of crosses merely as such, both Books of Common Prayer had excluded them from use in the services. They were no longer to be employed; and nothing is more probable, therefore, than that if they could be turned to any profit, they would be made the subject, either of sale or robbery, and that in the popular disturbances which accompanied the great change in the religion of the nation, and in many cases anticipated and outran the acts of the Government, crosses would share the fate of images; so that between the fanaticism of the populace, and the cupidity of the courtiers, the ornaments of the churches, in every sense of that term, would be subject to spoliation and destruction. We find, indeed, by the Injunction of the Council of April 30, 1548, already referred to, that even at this early period such proceedings were going on, for that letter expressly forbids the sale or alienation of the chalices, silver crosses, bells, or other ornaments, which it declares were not given for that purpose to be alienated by parishes at their pleasure, but rather to be used to the intent they were first given, or to some other necessary and convenient service of the Church. Under these circumstances, it cannot be matter of surprise, if comparatively few crosses remained either standing in the churches, or preserved in the repositories of its ornaments.

Crosses excluded from use.

On the accession of Queen *Mary*, all the old superstitions were restored, and the Acts of Parliament to which we have referred were repealed. The images which had not been taken down remained, and many which had been taken down were restored.

Queen Mary's reign.

On the accession of Queen *Elizabeth*, in the year 1558, the statutes of Queen *Mary* on these matters were repealed, the supremacy of the Crown was established by the Act 1 *Elizabeth*, c. 1, and all such jurisdiction in spiritual matters as hitherto had been, or lawfully might be, exercised by any spiritual or ecclesiastical authority was annexed to the

Queen Elizabeth's reign.

1857.

LIDDELL v. WESTERTON and LIDDELL v. BEAL. Judgment.

Crown of *England*, and power was given to the Queen, and her successors, to appoint Commissioners for the purpose of exercising ecclesiastical jurisdiction.

By the 1 *Elizabeth*, c. 2, the second Prayer Book of *Edward* VI., with certain alterations, was re-established, Injunctions were issued, and Articles of Visitation framed, much to the same effect as those already promulgated in the reign of *Edward* VI., but which do not appear to their Lordships to extend the prohibition with respect to images.

Opinions of Reformers in Queen Elizabeth's days as to Crosses, &c.

It is known, indeed, that at this time great differences of opinion prevailed amongst the early Reformers with respect to crosses and crucifixes, and that the Queen was favourable to the use of both; that she retained them in her own chapel; and, although they were removed for a time, in consequence of the remonstrances made to her, they were afterwards restored. (1 Cardwell, Doc. Ann., p. 268.) But a greater distinction was made between the cross and the crucifix, and the use of the former might well be permitted while the other was forbidden.

This is very manifest from the letter of *George Cassander* to Bishop *Cox*, dated at *Worms*, 1560, printed in the second series of the Zurich Letters, pp. 42-3. He there expresses himself in these terms:—'I understand that you are not altogether agreed among yourselves with respect to the setting up the image of the cross or the crucifix in the church; but I do not sufficiently understand whether the question refers to the mere figure of a cross, or also to the image of Christ hanging upon it. I have seen here a certain print which contained a cross only in the middle, with some texts of Holy Scripture in the English language written on each side; whence I suspect that your question only refers to the figure of the cross.' . . . 'Your Excellence is aware in what frequent use, and in what great esteem, the figure of the cross was held among the early Christians; insomuch that it was everywhere placed and represented in their buildings, sacred and profane, public and private; and this, too, before the practice of setting up other images in the churches, whether of Christ

Himself, or of the Saints, had come into use; that on the destruction of all monuments of idolatry, by which everything was defiled, the figure of the cross, which was, as it were, a sacred symbol of Christianity, succeeded under better auspices into their place. And like as the word cross, in the writings of the Evangelists and Apostles, mystically signifies the passion, death, and triumph of Christ, and the afflictions of the Saints; so also by the figure of the cross everywhere set up, and meeting the eye, they intended all these things to be set forth, as it were, by a mystic symbol, and infixed in men's minds; wherefore they made a great distinction between the figure or representation of the cross and all other images.'

That many of the English Bishops objected both to crosses and crucifixes, and either ordered or sanctioned their removal from churches within their dioceses, and that in many others they were defaced or destroyed by the violence of the people, can admit of no doubt; and that this violence extended also to monuments in churches, appears by a proclamation issued by Queen *Elizabeth* against defacers of monuments in the year 1560; for it speaks of these proceedings as 'to the slander of such as either gave or had charge in times past only to deface monuments of idolatry and false feigned images in churches and abbeys;' expressions which tend strongly to confirm the meaning their Lordships have already attributed to the Injunctions and Acts of Parliament of *Edward* VI.

Result as to crosses.

Upon the whole their Lordships, after the most anxious consideration, have come to the conclusion that crosses, as distinguished from crucifixes, have been in use as ornaments of churches from the earliest periods of Christianity; that when used as mere emblems of the Christian faith, and not as objects of superstitious reverence, they may still lawfully be erected as architectural decorations of churches; that the wooden cross erected on the chancel screen of St. *Barnabas'* is to be considered as a mere architectural ornament; and that, as to this article, they must advise her Majesty to reverse the judgment complained of. Their Lordships hope and believe that the laws in force

Wooden cross at St. Barnabas'.

1857.

LIDDELL v. WESTERTON and LIDDELL v. BEAL. Judgment.

respecting the consecration of any building for a church, and which forbid any subsequent alteration without a faculty from the ordinary, will be sufficient to prevent any abuse in this respect. This decision, however, by no means disposes of the question as to crosses attached to Communion Tables, which it will be convenient to deal with in connection with the altar at St. *Barnabas'*, which is ordered to be removed.

Altar at St. Barnabas'.

This article of church furniture consists of a marble slab, with a super-altare on the side nearest to the wall of the chapel. It stands apart from the wall, supported upon stone carved arches, the arches resting upon a stone plinth, which is let into and embedded in the pavement on which it stands. The cross is attached to the super-altare, and stands between two large candlesticks, which are moveable. The question is whether this structure is a Communion Table within the meaning of the Law. The Appellants in their pleadings term these tables 'altars or Communion Tables;' and in the argument they have referred to two recent statutes, in which the word altar is used to signify the 'Communion Table.' When the same thing is signified, it may not be of much importance by what name it is called; but the distinction between an 'altar' and a 'Communion Table' is in itself essential, and deeply founded in the most important differences in matters of faith between Protestants and Romanists—namely, in the different notions of the nature of the Lord's Supper, which prevailed in the Roman Catholic Church at the time of the Reformation, and those which were introduced by the Reformers. By the former it was considered as a sacrifice of the Body and Blood of the Saviour. The altar was the place on which the sacrifice was to be made; the elements were to be consecrated, and, being so consecrated, were treated as the actual Body and Blood of the Victim. The Reformers, on the other hand, considered the Holy Communion not as a sacrifice, but as a feast, to be celebrated at the Lord's Table; though as to the consecration of the elements, and the effect of this consecration, and several other points, they differed greatly among themselves. This

distinction is well pointed out in *Cudworth's* 'Discourse concerning the true notion of the Lord's Supper,' chap. v., p. 27. 'We see, then, how that theological controversy which hath cost so many disputes, whether the Lord's Supper be a sacrifice, is already decided; for it is not "sacrificium," but "epulum;" not a sacrifice, but a feast upon sacrifice; or else, in other words, not "oblatio sacrificii," but, as Tertullian excellently speaks, "participatio sacrificii;" not the offering of something up to God upon an altar, but the eating of something which comes from God's Altar, and is set upon our tables. Neither was it ever known amongst the Jews or Heathens, that those tables on which they did eat their sacrifices should be called by the name of altars. . . . Therefore, he (St. *Paul*) must needs call the Communion Table by the name of the Lord's Table—i.e. the table on which God's meat is eaten, not His altar on which it is offered.'

Roman Catholic altars.

That the Roman Catholic altars are constructed with a view to this doctrine of sacrifice admits of no doubt. Cardinal *Bona* speaks of them in these terms:—'De altaribus novi Testamenti agendum est in quibus corporis et sanguinis Christi sacrificium incruentum immolatur.' (Rerum Liturgicarum, liber i., c. 20.) With respect to the question what is required to constitute a Roman Catholic altar, we have been furnished with valuable information by a treatise entitled 'Institutiones liturgicæ ad usum Seminarii Romani,' by *Fornici*, the present text-book of the Pope's Seminary. In the first part, 'De sacrificio Missæ' (c. 3, p. 18), 'De Altari, ejusque ornatu,' it is laid down, in the first place, 'Nunquam extra altare hostiam immolari.' It is then stated that altars originally were made indifferently of wood or stone, but that many centuries ago the Church ordered that they should be only of stone. The term 'altar' is thus explained:—'Nomine autem altaris intelligitur superficies plana ad sacrificium missæ immediate deputata.' The altar is to be in the church; it is to be fixed and immovable, 'immobile edificatum, seu fixum super pedibus, seu base, quod habet totam integram planitiem seu mensam superiorem,' and it is required to be

1857.

LIDDELL v. WESTERTON and LIDDELL v. BEAL. Judgment.

'lapideum, et ab Episcopo consecratum.' The treatise then proceeds to state that by most ancient usage, as early as the Council of *Tours*, in the year 567, the standard of the cross, 'Vexillum crucis,' was to be placed in the middle of the altar; it states that by the term 'cross' is meant 'the crucifix;' and it refers to two comparatively modern declarations on the subject by the Holy See, one in 1746 and another in 1822, by which orders are given with respect to the size and position of the crucifix on the altar. It then refers to the lights upon the altar: 'Ad utrumque crucis latus cereum in missæ sacrificio accendi jubet ecclesia' (p. 21); and it refers to the Rubric, by which it is ordered: 'Collocetur crux et candelabra saltem duo' (p. 23). Such, then, as regards its form, is the Roman Catholic altar. A stone structure fixed in the church, and immovable with a plain surface, or 'mensa,' on which the unbloody sacrifice ('sacrificium incruentum') may be offered; on which the Host and the Cup ('Hostia et Calix') may be placed with a crucifix, and two candlesticks, as essential adjuncts to it.

Doctrine of real presence undecided at date of First Prayer Book.

At the date of the First Prayer Book of *Edward* VI., the doctrine of the English Church as to the Real Presence and the nature of the Holy Communion was undecided; the book therefore enjoined no change in the form of the altar, but spoke of the rite itself as the Lord's Supper, commonly called the High Mass, and of the structure indifferently by the names of the altar and the Lord's Table. It contains a prayer for the consecration of the sacred elements, in which the sign of the cross is to be used. The bread is to be unleavened, and round as it was aforetime. The corporas, the paten, the chalice, the vestments, are all articles directed to be used in the Roman Catholic Ritual, and spoken of by those names in the Missal.

Otherwise at date of Second Prayer Book.

But by the time when the Second Prayer Book was introduced, a great change had taken place in the opinion of the English Church, and the consequence was, that, on the revision of the service, these several matters were completely altered; the use of a surplice was substituted for the several vestments previously enjoined; *the prayer for*

1857.

LIDDELL r. WESTERTON and LIDDELL r. BEAL. Judgment.

consecration of the elements was omitted, though in the present Prayer Book it is restored;* the bread and wine delivered to the communicants were no longer described as the Body and Blood of Christ, as was the case in the First Prayer Book; the table was no longer spoken of as the altar, but as the Lord's Table, or as God's Board; and the table is to have, at the time of the Communion, a fair white linen cloth upon it, and is to stand in the body of the church, or in the chancel, where morning prayer and evening prayer are appointed to be said. And it is declared by the Rubric that, 'to take away the superstition which any person hath, or might have, in the bread and wine, it shall suffice that the bread be such as is usual to be eaten at the table with other meals, but the best and purest wheaten bread that conveniently may be gotten. And if any of the bread and wine remain, the curate shall have it to his own use.'

And also in Articles of 1562.

The distinction between the Supper of the Lord and the Sacrifice of the Mass is set forth with great precision in the Articles agreed on in Convocation in the year 1562, soon after the accession of Queen *Elizabeth*, and which still form the Articles of the Church of *England*. The 28th Article, 'Of the Lord's Supper,' contains this clause:—'The Supper of the Lord is not only a sign of the love that Christians ought to have amongst themselves one to another, but rather is a sacrament of our redemption by Christ's death; insomuch that to such as rightly, worthily, and with faith receive the same, the bread which we break is a partaking of the Body of Christ, and likewise the cup of blessing is a partaking of the Blood of Christ.' The Article then contains a declaration against transubstantiation; and Article 31, entitled 'Of the one Oblation of Christ finished upon the Cross,' declares that the 'sacrifices of masses in the which it

* The italicised words are a misapprehension, as the Second Prayer Book contained the prayer in question, but altered so as to leave out the sign of the cross and the prayer for the sanctification of the elements by the Holy Spirit (ἐπίκλησις). In the Report by Brodrick and Freemantle the italicised words are changed, and made to run as follows:—'Material alterations were introduced in the Prayer of Consecration.'

1857.

LIDDELL v. WESTERTON and LIDDELL v. BEAL. Judgment.

was commonly said that the Priest did offer Chirst for the quick and dead, to have remission of pains or guilt, were blasphemous fables and dangerous deceits.'

This change in the view, taken of the nature of the sacrament, naturally called for a corresponding change in the ancient altar. It was no longer to be an altar of sacrifice, but merely a table, at which the communicants were to partake of the Lord's Supper. Accordingly it appears that, with or without sufficient authority, such change had been carried into effect in the majority of churches before the Act of the 5th and 6th *Edward* VI. was passed. At his visitation in 1550, Bishop *Ridley* issued injunctions, in which, after forbidding the use of super-altaries, he introduces, among other directions, the following item:—'Whereas in divers places some use the Lord's Board after the form of a table, and some as an altar, whereby dissension is perceived to arise among the unlearned; therefore, wishing a godly unity to be observed in all our diocese, and for that the form of a table may more move and turn the simple from the old superstitious opinions of the Popish Mass, and to the right use of the Lord's Supper, we exhort the Curates, Churchwardens and Questmen here present to erect and set up the Lord's Board after the form of an honest table decently covered in such place of the quire or chancel, as shall be thought most meet by their discretion and agreement, so that the Ministers with the Communicants may have their place separated from the rest of the people; and to take down and abolish all other by-altars and tables.' (1 Cardwell, Doc. Ann., p. 94.)

This led to a change as to the altar.

This injunction extended only to *Ridley's* own diocese, and probably had no binding force even there; but an order was afterwards, in the month of November in the same year, issued by the King's Council to *Ridley* and the other Bishops, reciting that in most of the churches the altars were already taken down, and ordering that those which still remained should be taken down, and tables substituted. (1 Cardwell, Doc. Ann., p. 101.) Bishop *Burnet* remarks upon those changes, that the reasons for

them were to remove the people from the superstitious opinions of the Popish Mass, and that a table was a more proper name than an altar for that on which the Sacrament was laid. He says: 'It was observed that altars were erected for the sacrifices under the Law, which ceasing they also were to cease, and that Christ had instituted the Sacrament, not at an altar, but a table, and it had been ordered by the Preface to the Book of Common Prayer, that if any doubt arose about any part of it, the determining of it should be referred to the Bishop of the diocese. Upon these reasons, therefore, was this change ordered to be made in all *England*, which was universally executed this year.' (Burnet, Hist. of Ref., vol. ii., p. 95.) By the injunctions of Queen *Elizabeth* issued in the first year of her reign (1 Cardwell, Doc. Ann., p. 234) it is ordered 'that the holy table in every church be decently made, and set in the place where the altar stood, and there commonly covered, as thereto belongeth, and as shall be appointed by the visitors, and so to stand, saving when the Communion of the Sacrament is to be distributed; at which time the same shall be so placed in good sort within the chancel, as whereby the Minister may be more conveniently heard of the communicants in his prayer and ministration, and the communicants also more conveniently, and in more number, communicate with the said Minister. And after the Communion done, from time to time the same holy table to be placed where it stood before.'

Injunctions of Elizabeth.

These injunctions plainly show that the Communion of the Lord's Supper was to be held at a table as distinguished from an altar, a table in the ordinary meaning of that term; that as by the Rubric the bread used was to be 'the ordinary bread eaten at table with other meats,' so the table was to be of the character of those employed on such occasions; that it was not only to be moveable, but was from time to time to be moved. The 82nd Canon of 1604—that which is now in force—introduces no material alterations; it assumes the existence in all churches of convenient and decent tables for the celebration of the Holy Communion, and provides that they shall be kept in repair. It orders

Effect of the injunctions.

82nd Canon.

1857.

LIDDELL v. WESTERTON and LIDDELL v. BEAL. Judgment.

that the table be covered in time of Divine Service with a carpet of silk or other decent stuff thought meet by the Ordinary, and at the time of the ministration with a fair linen cloth, as becometh that table.

Law at present.

Since this period no alteration has been made in the Law with respect to the nature of the table to be used. The Rubric of the present Prayer Book provides only that at the Communion time the table, having a fair white linen cloth upon it, shall stand in the body of the church, or chancel, where morning or evening prayer are appointed to be said; and the Priest is to commence the service standing at the north side of the table. The term 'altar' is never used to describe it, and there is an express declaration at the close of the service against the doctrine of transubstantiation, with which the ideas of an altar and sacrifice are closely connected.

Applied to the altar at St. Barnabas'.

Under these circumstances the first question is, whether the stone structure at St. *Barnabas'* is a Communion Table within the meaning of the Canons and the Rubric; and their Lordships are clearly of opinion that it is not. The case is within the principle of Sir *Herbert Jenner Fust's* decision in *Faulkner* v. *Litchfield* (1 Robert, Eccl. Rep., p. 184),* from which indeed the present proceeding is in effect an appeal. In the elaborate judgment in that case, the whole subject is discussed with a learning and ability which makes it useless on the present occasion to go further than their Lordships have already done into the authorities. The decree complained of in the appeal of *Liddell* v. *Beal*, has ordered the church or chapel wardens of St. *Barnabas'* to remove the present structure of stone used as a Communion Table, and to provide instead thereof a moveable table of wood. Their Lordships had at first some doubt whether the Law had prescribed of what material the table should be made; but, on further consideration, they are satisfied that the opinion expressed by Sir *Herbert Jenner Fust*, and adopted in the decree in this case, is well founded.

'Table,' what?

The term 'table,' and the corresponding Latin word

* For statement of this case see Appendix, Note B.

'mensa,' especially when it is considered for what purpose it is to be used, naturally import a table of the material of which tables are ordinarily made. The Communion Table was to be provided by the parish, was to be moveable, not by machinery, but by hand, and was actually to be very frequently moved. Wood is a lighter and cheaper material than stone, and the circumstance that the old altar was necessarily of stone would be an additional reason with the Reformers for requiring that the table should be of wood. The Canons of 1571 expressly provide that it shall be of that material:—'Mensa ex asseribus composite juncta;' and although those Canons, not having received the Royal assent, were not of themselves of binding force, it is probable that they were generally acted upon, and they sufficiently show what was at that time understood to be the proper material of the table which, under the Act of *Elizabeth*, and the regulations of *Edward* VI., was to be substituted for the altar. The Canons of 1604, which are now in force, do not contain any provision upon this point. They speak of Communion Tables as things which already exist in parish churches, and provide for their repair, and give minute directions as to the covering to be used. If any doubt had existed at that time as to the material of the table itself, it is not probable that the Canons would have omitted all notice of this question. Their Lordships, therefore, are satisfied that the decision upon this point in *Faulkner* v. *Litchfield* is well founded, and they must advise her Majesty that the decree as to the removal of the stone structure at St. *Barnabas'*, and the cross upon it, and the substitution of a Communion Table of wood, ought to be affirmed.

Canons of 1571.

Canons of 1604.

Next with respect to the wooden cross attached to the Communion Table at St. *Paul's*. Their Lordships have already declared their opinion that the Communion Table intended by the Canon was a table in the ordinary sense of the word, flat and moveable, capable of being covered with a cloth, at which, or around which, the communicants might be placed in order to partake of the Lord's Supper; and the question is, whether the existence of a cross attached to the

Cross on table at St. Paul's.

1857.

LIDDELL v. WESTERTON and LIDDELL v. BEAL.

Judgment.

table is consistent either with the spirit or with the letter of those regulations. Their Lordships are clearly of opinion that it is not; and they must recommend that upon this point also the decree complained of should be affirmed.

Argument as to moving the table considered.

It may be urged, and, indeed, was urged with great force by Counsel at the bar, that in modern usage the Communion Table never, in fact, is moved; that the general adoption of rails to fence off the table from the rest of the church shows that its removal is never contemplated; and that, if it is not to be moved, it is useless to require it to be moveable; that if it be in such a form that a sufficient portion of it may be covered with a fair linen cloth to receive the sacred elements, it is idle to insist on the whole being capable of being covered. To these observations the answer is, that the distinction between an altar and a table is in itself essential; that the circumstances, therefore, which constitute the distinction, however trifling in themselves, are for that reason important; and that when positive rules are established by Law, courts of justice, when called into action by parties entitled to maintain the suit, are bound to enforce the Law as they find it, leaving it to the Legislature, if it see fit, in any manner to alter it.

Credence Tables.

The next question is as to the Credence Tables. Here the Rubrics of the Prayer Book become important. Their Lordships entirely agree with the opinions expressed by the learned Judges in these cases, and in *Faulkner* v. *Litchfield*, that in the performance of the services, rites, and ceremonies ordered by the Prayer Book, the directions contained in it must be strictly observed; that no omission and no addition can be permitted; but they are not prepared to hold that the use of all articles not expressly mentioned in the Rubric, although quite consistent with, and even subsidiary to, the service is forbidden. Organs are not mentioned, yet, because they are auxiliary to the singing, they are allowed. Pews, cushions to kneel upon, pulpit-cloths, hassocks, seats by the Communion Table, are in constant use, yet they are not mentioned in the Rubric.

Now, what is a Credence Table? It is simply a small side-table, on which the bread and wine are placed before the consecration, having no connection with any superstitious usage of the Church of Rome. Their removal has been ordered on the ground that they are adjuncts to an altar; their Lordships cannot but think that they are more properly to be regarded as adjuncts to the Communion Table.

The Rubric directs that at a certain point in the course of the Communion Service (for this is, no doubt, the true meaning of the Rubric) the Minister shall place the bread and wine on the Communion Table, but where they are to be placed previously is nowhere stated. In practice they are usually placed on the Communion Table before the commencement of the service, but this certainly is not according to the order prescribed. Nothing seems to be less objectionable than a small side-table, from which they may be conveniently reached by the officiating Minister, and at the proper time transferred to the Communion Table. As to the Credence Tables, their Lordships, therefore, must advise a reversal of the sentence complained of.

Embroidered cloths.

Next, as to the embroidered cloths, it is said that the Canon orders a covering of silk, or of some other proper material, but that it does not mention, and therefore by implication excludes, more than one covering. Their Lordships are unable to adopt this construction. An order that a table shall always be covered with a cloth surely does not imply that it shall always be covered with the same cloth, or with a cloth of the same colour, or texture. The object of this Canon seems to be to secure a cloth of a sufficiently handsome description, not to guard against too much splendour. In practice, as was justly observed at the bar, black cloths are in many churches used during Lent, and on the death of the Sovereign and some other occasions, and there seems nothing objectionable in the practice. Whether the cloths so used are suitable, or not, is a matter to be left to the discretion of the Ordinary. In this case their Lordships do not see any sufficient reason for interference, and they must, therefore, advise the rever-

1857.

LIDDELL v. WESTERTON and LIDDELL v. BEAL. Judgment.

sal of the sentence as to the cloths used for the covering of the Lord's Table during the time of Divine Service, both with respect to St. *Paul's* and St. *Barnabas'*.

The last question is with respect to the embroidered linen and lace, used on the Communion Table at the time of the ministration of the Holy Communion. The Rubric and the Canon prescribe the use of a fair white linen cloth, and both the learned Judges in the Court below have been of opinion that embroidery and lace are not consistent with the meaning of that expression, having regard to the nature of the table on which the cloth is to be used. Although their Lordships are not disposed in any case to restrict within narrower limits than the Law has imposed, the discretion which within those limits is justly allowed to congregations by the rules both of the Ecclesiastical and the Common Law Courts, the directions of the Rubric must be complied with; and, upon the whole, their Lordships do not dissent from the construction of the Rubric adopted by the present decree upon this point; and they must therefore advise her Majesty to affirm it.

Costs.

As the judgments in these cases have been materially altered, and such alterations ought to have been made at the hearing in the Arches Court, so much of the sentence of that Court in each case as awards costs against the Appellants must, of course, be reversed; and in these proceedings, as well as in the present appeals, each party must bear their own costs.

In the case of '*Gorham* v. Bishop of *Exeter*,' where a difference of opinion as to the judgment existed amongst the Prelates who attended at the hearing, it was thought proper publicly to announce such difference. In the present case it is satisfactory to their Lordships to be able to state that both his Grace the Archbishop of *Canterbury* and the Lord Bishop of *London* concur in the judgment which has just been delivered.

1860.

LIDDELL v. BEAL. Further proceedings.

[Further proceedings in *Liddell* v. *Beal* (St. *Barnabas'*).*

June 22, 1860.—Motion made by *Hayes* and *Money*, the Chapelwardens of St. *Barnabas'*, stating on affidavit that the orders of the Court contained in the Monition had been complied with, and praying that they might be discharged, with costs, from the further observance of the suit. This was objected to by the Respondent, who brought in an Act on Petition to enforce, the Monition, alleging that it was in great part not complied with; first, that the metal cross had been placed on the sill of the great eastern window of the Church above the Communion Table; second, that the Table which had been substituted for the stone altar was not a flat table, but had an elevation or super-altar; third, that the Commandments were not set up on or against the east end of the Church over the Communion Table, but were set up against the walls on the east side of the Chancel screen.

In the answer it was alleged that the Monition had been obeyed; that the cross was disconnected with the Communion Table; that the Table was flat, the elevation being a moveable ledge of wood at the back of the Table, on which the candlesticks were placed; and, lastly, that, on account of the structure of the Church, the Congregation would not be able to read the Commandments if they were placed over the Communion Table.

After argument by Mr. *Beal* (the Respondent) in person, and by Dr. *Phillimore*, Q.C., and Dr. *Tristram* for the Chapelwardens, judgment was pronounced by

SIR J. KNIGHT BRUCE, as follows:— Judgment.

The question before their Lordships is whether the Minister, or Incumbent, and the Churchwardens, or Chapelwardens, of St. *Barnabas'*, in the Diocese of *London*, have complied with a Monition issued in the course of last year in consequence of a decision of the Privy Council in a former year, by which they were directed to remove the

* *Before* Archbishop of York; Lord Kingsdown; Lord Justice Knight Bruce; Lord Justice Turner; Sir Edward Ryan; Sir John T. Coleridge.

1860.

LIDDELL v. BEAL.

Further proceedings. Judgment.

structure of stone used as a Communion Table, in the said Church, or Chapel, together with the cross on or near to the same, and to provide instead thereof a flat, moveable Table of wood; to remove any cover used at the time of the ministration of the Sacrament of the Lord's Supper worked or embriodered with lace, or otherwise ornamented, and to provide and substitute a fair white linen cloth without lace, or embroidery, or other ornament to cover the Communion Table at the time of the ministration of the Lord's Supper, and to cause the Ten Commandments to be set up on or against the east end of the said Church, or Chapel, in compliance with the Canon in that case made and provided, thirty days after they shall have been served therewith.

It has been alleged by Mr. *Beal* in a very temperate argument, and a very sensible one, that these requisitions have not been complied with; at least that some of them have not, because as to some of the requisitions there is not any complaint or question.

The first is the direction 'to remove the structure of stone used as a Communion Table in the said Church, or Chapel.' That has been done; there can be no doubt that that has been obeyed. But the Monition goes on 'together with the Cross at or near the same.'

Now there was formerly a cross which stood upon the stone table, and was, in a sense, at least affixed to it; which was objected to, and, as it appears, properly objected to. The stone table has been altogether removed, and with it the cross; but the cross has been placed in another part of the Church, or Chapel, not in any sense upon the table which has been substituted for the stone table, nor in any sense in communication, or contact, or connection with it. It remains in the church as an ornament of the church, and their Lordships think (if the word may respectfully be applied to such a subject) not an unusual or improper ornament; in no sense remaining there so as to disobey or conflict with the order contained in this Monition.

Their Lordships therefore think that that part of the Monition which directs the structure of stone to be

removed, together with the cross on or near the same, has been obeyed.

It then directs that there shall be provided 'instead thereof a flat, moveable table of wood.' That has been done. It is stated, however, with truth that upon this Table there is placed, and in general stands, a moveable ledge of wood for the purpose of holding the candlesticks and vessels; at least that is the purpose for which it is used. It is, as I have said, not fixed to the Table. If remaining there when the cloth is to be placed upon the Table for the purpose of the administration of the Lord's Supper, as it would interfere with that, it is accordingly removed, and the cloth is placed on the Table, and then the ledge replaced.

It is not shown, and their Lordships think it ought not to be inferred, that there is anything superstitious (if the term may be used) or anything improper in the addition of that ledge. But if there were, their Lordships are not satisfied that it is within the terms of the Monition, or that the Monition in any sense or respect extends to it. But in whatever way that matter be taken, their Lordships think that neither disobedience nor offence is established with regard to the moveable ledge.

They are then directed 'to remove any cover used at the time of the ministration of the Sacrament of the Lord's Supper worked or embroidered with lace, or otherwise ornamented, and to provide or substitute a fair white linen cloth, without lace or embroidery, or other ornament, to cover the Communion Table at the time of the ministration of the Lord's Supper. That has been done, because, as has already been said, though the ledge would interfere with the covering of the Table completely if the ledge remained, the removing of the ledge for the purpose prevents any such difficulty or objection.

They are further directed 'to cause the Ten Commandments to be set up on or against the east end of the Church, or Chapel,' in compliance with the Canon in that case made and provided. The whole of that part of the sentence must of course be taken together, and when we refer to

1860.

LIDDELL v. BEAL. Further proceedings. Judgment.

the Canon on the subject (which is the 82nd Canon) we find it its thus expressed :—'That the Ten Commandents be set up upon the east end of every Church, or Chapel, where the people may best see and read the same.' Now it appears upon the evidence, and their Lordships are satisfied that, if this were literally complied with in the manner contended for, from the nature of the screen, and the opening in the screen, which has not been directed to be removed, the people assembled could not see or read the Ten Commandments so set up; and their Lordships are of opinion, from the evidence before them, that the Ten Commandments are set up as nearly according to the Canon as the nature of the structure will permit; and they think, therefore, that neither disobedience, nor irregularity, nor evasion has been established with respect to the circumstance; and as to the letters in which the Ten Commandments are written, a *facsimile* of the writing having been laid before us, their Lordships are of opinion that there is no substantial difficulty in the way of reading the letters which have been used; the letters (which are now not uncommon) can very easily be deciphered and understood by anyone capable of reading ordinary writing or printing, which in ordinary cases is used.

Their Lordships are of opinion, therefore, that no disobedience, no impropriety, no irregularity has been established; and that the present application therefore fails. But the application has been conducted temperately and properly, and their Lordships do not think it necessary to give any direction as to costs.]

[Reported in 14 Moore's Privy Council Reports.]

THE REVEREND ROWLAND WILLIAMS . . . . . } APPELLANT;

AND

THE RIGHT REVEREND THE LORD BISHOP OF SALISBURY . . . . } RESPONDENT.

THE REVEREND HENRY BRISTOW WILSON, CLERK . . . . . } APPELLANT;

AND

THE REVEREND JAMES FENDALL, CLERK. . . . . } RESPONDENT.*

On Appeal from the Arches Court of Canterbury.

Proceedings against a Clerk in Holy Orders under the Church Discipline Act, 3rd and 4th Vic., c. 86. for publishing heretical doctrines in contravention and violation of the Articles of Religion and Formularies of the Church of *England*, are of a criminal nature, and it is necessary that the accusation should be stated with precision and distinctness in the pleadings.

The Articles of Charge must (1) distinctly state the opinions which the Clerk has advisedly maintained, and must set forth the passages of the work in which those opinions are stated; and (2) such Articles must specify the doctrines of the Church, which the opinions of the Clerk are alleged to have contravened, and the particular Articles of Religion and the Formularies which contain such doctrines.

The Accuser is for the purpose of the Charge con-

* *Present*: The Lord Chancellor (Westbury); the Archbishop of Canterbury (Dr. Longley); the Archbishop of York (Dr. Thomson) the Bishop of London (Dr. Tait); Lord Cranworth, Lord Chelmsford, and Lord Kingsdown.

fined to the Charges, which are included and set out in the Articles of Charge as the matter of accusation; but it is competent to the Accused to explain from the rest of his work, from which the passages libelled are extracted, the sense or meaning of any passage or word that is challenged by the Accuser.

With respect to the legal tests of doctrine in the Church of *England*, by the application of which the Judicial Committee, or the Appellate Court is to try the soundness of the passages libelled, it is the province of that Court, on the one hand, to ascertain the true construction of the Articles of Religion and Formularies referred to in each charge, according to the legal rules for the interpretation of Statutes and written instruments; and, on the other hand, to ascertain the plain grammatical meaning of the passages which are charged as being contrary to, or inconsistent with, the doctrines of the Church.

Matters of doctrine in which the Church has prescribed no rule may be discussed without penal consequences; and no rule is to be ascribed to the Church, which is not found expressly and distinctly stated, or which is not plainly involved in, or to be collected from, the written law of the Church.

In the eleventh Article of Religion it is laid down that 'we are accounted righteous before God only for the merits of our Lord and Saviour Jesus Christ, and not for our own works or deservings.' *Held*, that as the Article was wholly silent as to the merits of Jesus Christ being transferred to us, and asserts only that we are justified for the merits of Jesus Christ our Saviour by faith, and by faith alone, that it was not penal in a Clergyman to speak of merit by transfer as a 'fiction,' however unseemly that word may be when used in connection with such a subject.

In an Article against a Clergyman it was charged that it was a contradiction of the doctrine of the Church of *England* as laid down in the 6th and 20th Articles of Religion, the *Nicene* Creed, and in the Ordination Service of Priests to affirm that any part of the Canonical Books of the Old and New Testament upon any subject whatever, however unconnected with religious faith, or moral duty, was not written under the inspiration of the Holy Spirit. *Held*, that the charge that every part of the Scriptures was written under

the inspiration of the Holy Spirit was not established; as it was not to be found either in the sixth or twentieth Articles of Religion, the Formularies, the Service for the Ordering of Priests, or the *Nicene* Creed.

It is not competent for a Clergyman of the Church of *England* to teach or suggest, that a hope may be entertained of a state of things contrary to what the Church expressly teaches or declares will be the case.

An Article setting forth extracts of a review of a work that a Clergyman of the Church of *England* had reviewed, charging that he had therein advisedly declared that after this life there would be no judgment of God, awarding either eternal happiness or eternal misery, contrary to the Three Creeds, the Absolution, the Catechism, and the Burial and Commination Service: *Held*, not established by the passages of the work pleaded.

It is not penal for a Clergyman to express a hope of the ultimate pardon of the wicked.

June 1863.

WILLIAMS v. BISHOP OF SALISBURY and WILSON v. FENDALL. Statement.

THESE appeals were brought from sentences pronounced by the Dean of the Arches (Dr. *Lushington*), in two separate suits instituted in that Court. The one promoted by the Respondent, the Bishop of *Salisbury*, against the Appellant, the Rev. *Rowland Williams*, D.D., Vicar of *Broad Chalk*, in the county of *Wilts*, and Diocese of *Salisbury*; and the other promoted by the Respondent, the Rev. *James Fendall*, against the Appellant, the Rev. *Henry B. Wilson*, a Clerk in Holy Orders, and Vicar of *Great Staughton*, in the Diocese of *Ely*. Both suits came before the Arches Court on Letters of Request at the instance of the Bishops of *Salisbury* and *Ely*, and were instituted under the Church Discipline Act, 3 and 4 Vic. c. 86, for publishing in a book, called 'Essays and Reviews,' two separate Articles, or Essays (the one by the Appellant *Williams*, entitled '*Bunsen's* Biblical Researches;' and the other by the Appellant *Wilson*, called 'Séances historiques de Génève'—'The National Church'), in both of which were maintained and affirmed as it was alleged by the Promoters, erroneous and heretical doctrines, and opinions contrary and repugnant to the doctrine and teaching of the United Church of *England* and *Ireland*.

1863.

WILLIAMS v. BISHOP OF SALISBURY and WILSON v. FENDALL. Statement.

The Articles of Charge brought in by the Respondent the Bishop of *Salisbury* in the Arches Court against Dr. *Williams* were originally twenty-two, and those against Mr. *Wilson* by the Respondent *Fendall* nineteen in number, in which various passages extracted from the Appellants' respective Essays were articled and alleged to contain doctrines contrary to, or inconsistent with, the doctrines of the Church of *England*, as set forth in the Articles of Religion, and contrary to, and in derogation of, the doctrine and teaching of the Church as contained in the Book of Common Prayer and in her Formularies.

The several Articles of Charge were objected to, and opposed on behalf of both the Appellants; those admitted against the Appellant Dr. *Williams*, and which remained, or were reformed, and now formed the subject of Appeal to the Privy Council, were originally numbered the 7th, 12th, and 15th, and were as follows:—'Seventh. And we further article and object to you, the said Rev. *R. Williams*, that in the said Essay, or Review, are contained the following passages—that is to say, at pages 60 and 61:—"As in his *Egypt* our author sifts the historical date of the Bible, so in his '*Gott in der Geschichte*' he expounded its directly religious element. Lamenting, like *Pascal*, the wretchedness of our feverish being, when estranged from its eternal Stay, he traces, as a countryman of *Hegel*, the Divine thought bringing order out of confusion. Unlike the despairing school who forbid us to trust in God, or in conscience, unless we kill ourselves with literalism, he finds salvation for men, and states, only in becoming acquainted with the Author of our life, by whose reason the world stands fast, whose stamp we bear in our forethought, and whose voice our conscience echoes. In the Bible, as an expression of devout reason—and therefore to be read with reason in freedom—he finds record of the spiritual giants, whose experience generated the religious atmosphere we breathe." At pages 77 and 78, "But if such a notion alarms those who think that, apart from Omniscience belonging to the Jews, the proper conclusion of reason is Atheism; it is not inconsistent with the idea that Almighty

God has been pleased to educate men, and nations employing imagination no less than conscience, and suffering His lessons to play freely within the limits of humanity, and its shortcoming. Nor will any fair reader rise from the prophetical disquisition, without feeling that he has been under the guidance of a master's hand. The great result is to vindicate the work of the Eternal Spirit, that abiding influence which, as our Church teaches us in the Ordination Service, underlies all others, and in which converge all images of old time, and means of grace now; Temple, Scripture, Finger and Hand of God; and again preaching, Sacraments, Waters which comfort, and Flame which burns. If such a Spirit did not dwell in the Church, the Bible would not be inspired, for the Bible is, before all things, the written voice of the congregation. Bold as such a theory of inspiration may sound, it was the earliest creed of the Church, and it is the only one to which the facts of Scripture answer. The sacred writers acknowledge themselves men of like passions with ourselves, and we are promised illumination from the Spirit, which dwelt in them. Hence, when we find our Prayer Book constructed on the idea of the Church being an inspired society, instead of objecting that every one of us is fallible, we should define inspiration consistently with the facts of Scripture and of human nature. These would neither exclude the ideas of fallibility among Israelites of old, nor teach us to quench the spirit in true hearts for ever. But if anyone prefers thinking the sacred writers passionless machines, and calling *Luther* and *Milton* 'uninspired,' let him co-operate in researches by which his theory, if true, will be triumphantly confirmed."

'And we article and object that in the passages heinbefore recited, being portions of the said Essay, or Review, you did advisedly maintain or affirm that the Bible, or Holy Scripture, is "an expression of devout reason," and "the written voice of the congregation," not the "Word" of God, nor containing special revelation of His truth, or of His dealings with mankind, nor of the rule of our faith; or that you did therein advis-

1863.

WILLIAMS v. BISHOP OF SALISBURY and WILSON v. FENDALL. Statement.

edly maintain and affirm doctrines or opinions to that or the like purport and effect, and that the said doctrines, positions, or opinions, are contrary to, or inconsistent with, the 6th, 7th, and 20th, of the said Articles of Religion, and contrary to, and inconsistent with, that part of the *Nicene* Creed which declares in substance that the Holy Ghost spake by the Prophets.'

'Twelfth. And we article and object to you, the Rev. *R. Williams*, that in the said Essay, or Review, is contained the following passages, at pages 81 and 87:—"Propitiation would be the recovery of that peace which cannot be while sin divides us from the Searcher of hearts." And we article and object that in the passage hereinbefore recited, being a portion of the said Essay, or Review, you did advisedly maintain and affirm that the offering of Christ is not the propitiation for the sins of the whole world; or that you did therein advisedly maintain and affirm a doctrine, or opinion, to that or the like purport and effect, and that such doctrine or opinion is contrary to, or inconsistent with, the Thirty-first of the said Articles of Religion.'

'Fifteenth. And we further article and object to you, the Rev. *R. Williams*, that in the said Essay, or Review, is contained the following passage, at pages 80 and 81, in the words following—to wit:—"For though he embraces with more than orthodox warmth New Testament terms, he explains them in such a way that he may be charged with using Evangelical language in a philosophical sense. But, in reply, he would ask what proof is there that the reasonable sense of St. *Paul's* words was not the one which the Apostle intended?

'"Why may not justification by faith have meant the peace of mind or sense of Divine approval which comes of trust in a righteous God, rather than a fiction of merit by transfer? St. *Paul* would then be teaching moral responsibility as opposed to sacerdotalism, or that to obey is better than sacrifice. Faith would be opposed, not to the good deeds which conscience requires, but to works of appeasement by ritual. Justification would neither be an arbitrary ground of confidence, nor a reward upon con-

dition of our disclaiming merit, but rather a verdict of forgiveness on our repentance, and of acceptance upon the offering of our hearts."

'And we article and object that in the passage hereinbefore recited, being a portion of the said Essay, or Review, you did advisedly maintain and affirm that justification by faith means only the peace of mind, or sense of Divine approval, which comes of trust in a righteous God, and that justification is a verdict of forgiveness upon our repentance, and of acceptance upon the offering of our hearts; or that you did therein advisedly maintain and affirm a doctrine or opinion to that or the like purport and effect; and that such doctrine or opinion is contrary to, or inconsistent with, the Eleventh of the said Articles of Religion.'

As regarded the Appellant *Wilson*, the Articles of Charge remaining and reformed were those originally numbered Eighth, Twelfth, and Fourteenth.

The Eighth Article was as follows:—'And we further article and object to you, the Rev. *H. B. Wilson*, that in the said Essay, or Review, is the following passage, at pages 175, 176, and 177:—"It has been matter of great boast within the Church of England, in common with other Protestant Churches, that it is founded upon the 'Word of God'—a phrase which begs many a question, when applied collectively to the Books of the Old and New Testaments, a phrase which is never so applied to them by any of the Scriptural authors, and which, according to Protestant principles, never could be applied to them by any sufficient authority from without. In that which may be considered the pivot article of the Church, this expression does not occur, but only 'Holy Scripture,' 'Canonical Books,' 'Old and New Testaments.' It contains no declaration of the Bible being throughout supernaturally suggested, nor any intimation as to which portions of it were owing to a special Divine illumination, nor the slightest attempt at defining inspiration, whether mediate or immediate, whether through, or beside, or overruling the natural faculties of the subject of it—not the least hint of the re-

1863.

WILLIAMS v. BISHOP OF SALISBURY and WILSON v. FENDALL. Statement.

lation between the Divine and human elements in the composition of the Biblical Books. Even if the Fathers have usually considered 'canonical' as synonymous with 'miraculously inspired,' there is nothing to show that their sense of the word must necessarily be applied in our own Sixth Article. The word itself may mean either Books ruled and determined by the Church, or regulative Books, and the employment of it in the Article hesitates between these two significations. For at one time 'Holy Scripture' and Canonical Books are those Books 'of whose authority never was any doubt in the Church'—that is, they are 'determined' Books—and then the other, or non-Canonical Books, are described as those which 'the Church doth not apply to establish any doctrine'—that is, they are not 'regulative' Books. And if the other principal Churches of the Reformation have gone further in definition in this respect than our own, that is no reason we should force the silence of our Church into unison with their expressed declarations, but rather that we should rejoice in our comparative freedom. The Protestant feeling among us has satisfied itself in a blind way with the anti-Roman declaration that 'Holy Scripture containeth all things necessary to salvation; so that whatsoever is not read therein, nor may be proved thereby, is not to be required of any man that it should be believed as an Article of the Faith,' etc., and without reflecting how very much is wisely left open in that Article. For this declaration itself is partly negative and partly positive. As to its negative part, it declares that nothing—no clause of creed, no decision of council, no tradition or exposition—is to be required to be believed on peril of salvation, unless it be Scripture; but it does not lay down that everything which is contained in Scripture must be believed on the same peril. Or it may be expressed thus:—The Word of God is contained in Scripture, whence it does not follow that it is co-extensive with it. The Church to which we belong does not put that stumbling block before the feet of her members; it is their own fault if they place it there for themselves, authors of their own offence."'

'And we article and object to you, that in the passage hereinbefore recited, being portion of the said Essay, or Review, you did advisedly declare and affirm in effect that the Scriptures of the Old and New Testament were not written under the inspiration of the Holy Spirit, and that they were not necessarily at all, and certainly not in parts, the Word of God; or that you did therein advisedly declare and affirm a doctrine or opinion to that or the like purport or effect; and that such doctrine or opinion is contrary to, or inconsistent with, the 6th and 20th of the said Articles of Religion, and contrary to, or inconsistent with, the teaching of the said Church, as contained in that part of the *Nicene* Creed which declares in substance that the Holy Ghost spake by the Prophets; and as set forth in the Ordination of Priests in the Book of Common Prayer—to wit, in the words following:—"The Bishop shall deliver to every one of them the Bible into his hands, saying, 'Take thou authority to preach the Word of God.'"

'Twelfth. Also we further article and object to you, the Rev. *H. B. Wilson*, that in the said Essay, or Review, are the following passages, at pages 153 and 154:—"And when we hear fine distinctions drawn between covenanted and uncovenanted mercies, it seems either to be a distinction without a difference, or to amount to a denial of the broad and equal justice of the Supreme Being. We cannot be content to wrap this question up, and leave it for a mystery as to what shall become of those myriads of non-Christian races." And we article and object to you that in the passage hereinbefore recited, being portion of the said Essay, or Review, you did advisedly declare and affirm that the condition of men in a future state of existence will be determined by their moral conduct, according to the law or sect which they severally profess, exclusive of their religious belief; or that you did therein advisedly declare and affirm a doctrine or opinion to that or the like purport or effect; and that such doctrine or opinion is contradictory to, or inconsistent with, the 18th of the said Articles of Religion.'

'Fourteenth. And we further article and object to you,

1863.

WILLIAMS v. BISHOP OF SALISBURY and WILSON v. FENDALL. Statement.

the Rev. *H. B. Wilson*, that in the said Essay, or Review, is contained the following passage, at page 206:—"The Christian Church can only tend on those who are committed to its care to the verge of that abyss which parts this world from the world unseen. Some few of those fostered by her are now ripe for entering on a higher career; the many are but rudimentary spirits—general souls. What shall become of them? If we look abroad in the world, and regard the neutral character of the multitude, we are at a loss to apply to them either the promises or the denunciations of revelation. So the wise heathens could anticipate a reunion with the great and good of all ages; they could represent to themselves, at least in a figurative manner, the punishment and purgatory of the wicked; but they could not expect the reappearance in another world, for any purpose, of a Thersites or an Hyperbolos—social and political justice had been sufficiently done upon them. Yet there are such as these, and no better than these, under the Christian name—babblers, busybodies, livers to get gain, and mere eaters and drinkers. The Roman Church has imagined a *limbus infantium*; we must rather entertain a hope that there shall be found, after the great adjudication, receptacles suitable for those who shall be infants, not as to years of terrestrial life, but as to spiritual development—nurseries, as it were, and seed grounds, where the undeveloped may grow up under new conditions—the stunted may become strong, and the perverted be restored. And when the Christian Church in all its branches shall have fulfilled its sublunary office, and its Founder shall have surrendered His kingdom to the Great Father, all, both small and great, shall find a refuge in the bosom of the Universal Parent, to repose, or be quickened into higher life, in the ages to come, according to His will." And we article and object to you, that in the passage hereinbefore recited, being a portion of the said Essay, or Review, you did advisedly declare and affirm, in effect, that after this life, and at the end of the existing order of things on this earth, there will be no judgment of God awarding to those men whom He shall then ap-

prove everlasting life or eternal happiness, and to those men whom He shall then condemn everlasting death or eternal misery; or that you did therein advisedly declare and affirm a doctrine or opinion to that or the like purport or effect; and that the said doctrine or opinion is contrary to, or inconsistent with, the teaching of the said Church, as contained in the Creeds commonly called the Apostles' Creed, the *Nicene* Creed, and St. *Athanasius'* Creed; and as contained in the Absolution or Remission of Sins, which forms part of the Morning Prayer in the said Book of Common Prayer, and in which the Priest says, "Wherefore let us beseech Him to grant us true repentance and His Holy Spirit, that those things may please Him which we do at this present, and that the rest of our life hereafter may be pure and holy, so that at the last we may come to His eternal joy, through Jesus Christ our Lord." And as contained in the following part of the Catechism, which forms part of the said Book of Common Prayer:—"Question. What desirest thou of God in this prayer? Answer. I desire my Lord God, our Heavenly Father, who is the Giver of all goodness, to send His grace unto me and to all people. And I pray unto God that He will keep us from all sin and wickedness, and from our ghostly enemy, and from everlasting death." And as contained in the following portions of the Order for the Burial of the Dead, which forms part of the said Book of Common Prayer:—"In sure and certain hope of the resurrection to eternal life through our Lord Jesus Christ, who shall change our vile body, that it may be like unto His glorious Body, according to the mighty working whereby He is able to subdue all things unto Himself." "O merciful God, the Father of our Lord Jesus Christ, who is the Resurrection and the Life, in whom whosoever believeth shall live though he die; and whosoever liveth, and believeth in Him, shall not die eternally; who also taught us, by His Holy Apostle St. *Paul*, not to be sorry as men without hope for them that sleep in Him; we meekly beseech Thee, O Father, to raise us from the death of sin unto the life of righteousness, that when we shall

1863.

WILLIAMS v. BISHOP OF SALISBURY and WILSON v. FENDALL. Statement.

depart this life we may rest in Him, as our hope is this our brother doth; and at the general resurrection in the last day, we may be found acceptable in Thy sight and receive that blessing which Thy well-beloved Son shall then pronounce to all who love and fear Thee, saying, 'Come ye blessed children of My Father, receive the kingdom prepared for you from the beginning of the world.'" And as contained in the following portions of the Commination Service, which forms part of the said Book of Common Prayer:—"The day of the Lord cometh as a thief in the night."—"Then shall it be too late to knock when the door shall be shut, and too late to cry for mercy when it is the time of justice. O terrible Voice of most just judgment, which shall be pronounced upon them, when it shall be said unto them, 'Go ye cursed into fire everlasting, which is prepared for the devil and his angels.' This if we do Christ will deliver us from the curse of the law, and from the extreme malediction which shall light upon them that shall be set upon the left hand; and He will set us on His right hand, and give us the gracious benediction of His Father, commanding us to take possession of His glorious kingdom."

1862.

Proceedings in Court of the Arches.

The admission of the original Articles of Charge was opposed in the Court below (the Arches Court of Canterbury) both by Dr. *Williams* and Mr. *Wilson*, and argued against at great length by Dr. *Deane*, Q.C., and Mr. *Fitzjames Stephen* on their behalf; Dr. *Phillimore*, Q.C., Mr. *Coleridge*, Q.C., and Dr. *Swabey* were heard in support of the Articles.

The learned Judge of the Court of Arches (the Right Hon. Dr. *Lushington*) gave judgment on the question of the admissibility of the original Articles on June 25, 1862. With regard to the case of Dr. *Williams*, he rejected all such Articles of Charge as were not merely formal ones, except the 7th, 12th, and 15th, ordering the 7th and 12th to be reformed. With regard to the case of Mr. *Wilson*, he rejected all such Articles as were not merely formal, except the 8th, 12th, and 14th, ordering the 8th and 12th to be reformed, and gave to either party leave to

1862.

WILLIAMS v. BISHOP OF SALISBURY and WILSON v. FENDALL. Statement.

appeal to her Majesty in Council* from those judgments, but no appeal in either case was asserted.

The Articles were accordingly reformed and brought in in the form before stated.

Both Dr. *Williams* and Mr. *Wilson* filed allegations in answer to the reformed Articles, in which they severally and specifically denied that they had maintained, or affirmed, heretical doctrines contrary to the doctrine and teaching of the Church.

The allegations in reply to the reformed Articles having, after argument, been admitted, evidence was directed to be taken *vivâ voce* in open Court. The authorship and the publication of the several Essays in question were admitted, but no evidence was adduced by either side.

On the 15th of Dec., 1862, the learned Judge, in pronouncing the final sentence of the Court, said that he had already pronounced his opinion on the Articles of Accusation, and that he saw no reason to alter, or retract any portion of the judgments he had delivered on June 25, 1862; and by his final sentences declared the Articles of Accusation proved, and in each case pronounced sentence of suspension *ab officio et beneficio* for the term of one year, condemning both the Defendants (*Williams* and *Wilson*) in costs.

June 19, 20, 25, and 26, 1863.

Proceedings before Judicial Committee.

Separate Appeals were brought from these sentences. The Respondents adhered to the Appeals.

The Appellants, Dr. *Williams* and Mr. *Wilson*, appeared in person;

The Queen's Advocate (Sir *R. Phillimore*, Q.C.) and Dr. *Swabey* for the Respondent *Fendall*; and

The Queen's Advocate and Mr. *Coleridge*, Q.C., for the Respondent the Bishop of *Salisbury*.

The Respondent *Fendall* abandoned at the hearing of the Twelfth Article of his Charge.

Mr. *Wilson* and Dr. *Williams*, Appellants in person, were heard in support of their respective Appeals.

* 3rd and 4th Vic., c. 86, sec. 13, gives a discretionary power to the Judge to refuse or allow an appeal from interlocutory judgments in proceedings under that statute.

1863.

WILLIAMS v. BISHOP OF SALISBURY and WILSON v. FENDALL.

The Queen's Advocate *contra* for both Respondents.

Mr. *Coleridge*, Q.C., for the Bishop of *Salisbury*, having been heard,

Judgment was reserved to February 8, 1864, when it was delivered by

The LORD CHANCELLOR (Westbury).

Feb. 8, 1864. Judgment.

These Appeals do not give to this Tribunal the power, and therefore it is no part of its duty to pronounce any opinion on the character, effect, or tendency of the publications known by the name of 'Essays and Reviews.' Nor are we at liberty to take into consideration, for the purposes of the prosecution, the whole of the Essay of Dr. *Williams* or of the Essay of Mr. *Wilson*. A few short extracts only are before us, and our judgment must by Law be confined to the matter which is therein contained. If, therefore, the Book, or these two Essays, or either of them as a whole, be of a mischievous and baneful tendency, as weakening the foundation of Christian belief, and likely to cause many to offend, they will retain that character, and be liable to that condemnation, notwithstanding this our judgment.

Character of the suits.

These prosecutions are in the nature of criminal proceedings, and it is necessary that there should be precision and distinctness in the accusation. The Articles of Charge must distinctly state the opinions which the Clerk has advisedly maintained, and set forth the passages in which those opinions are stated; and, further, the Articles must specify the doctrines of the Church which such opinions or teaching of the Clerk are alleged to contravene, and the particular Articles of Religion or portions of the Formularies which contain such doctrines. The Accuser is, for the purpose of the Charge, confined to the passages which are included and set out in the Articles as the matter of the accusation; but it is competent to the accused party to explain from the rest of his work the sense or meaning of any passage or word that is challenged by the Accuser.

Limits of the jurisdiction of the Court as to doctrine.

With respect to the legal tests of doctrine in the Church of *England*, by the application of which we are to try the soundness or unsoundness of the passages libelled, we agree with the learned Judge in the Court below that the

Feb. 8, 1864.

WILLIAMS v. BISHOP OF SALISBURY and WILSON v. FENDALL. Judgment.

judgment in the *Gorham* case is conclusive:—'This Court, constituted for the purpose of advising her Majesty in matters which come within its competency, has no jurisdiction or authority to settle matters of faith or to determine what ought in any particular to be the doctrine of the Church of *England*. Its duty extends only to the consideration of that which is by Law established to be the doctrine of the Church of *England*, upon the true and legal construction of her Articles and Formularies.' (*Ante*, p. 35.) By the rule thus enunciated it is our duty to abide.

Our province is, on the one hand, to ascertain the true construction of those Articles of Religion and Formularies referred to in each Charge, according to the legal rules for the interpretation of statutes and written instruments; and, on the other hand, to ascertain the plain grammatical meaning of the passages which are charged as being contrary to or inconsistent with the doctrine of the Church, ascertained in the manner we have described.

Some matters of doctrine are left open.

It is obvious that there may be matters of doctrine on which the Church has not given any definite rule or standard of faith or opinion—there may be matters of religious belief on which the requisition of the Church may be less than Scripture may seem to warrant—there may be very many matters of religious speculation and enquiry on which the Church may have refrained from pronouncing any opinion at all. On matters on which the Church has prescribed no rule, there is so far freedom of opinion that they may be discussed without penal consequences. Nor in a proceeding like the present are we at liberty to ascribe to the Church any rule or teaching which we do not find expressly and distinctly stated, or which is not plainly involved in or to be collected from that which is written.

Accused, how far responsible.

With respect to the construction of the passages extracted from the Essays of the accused parties, the meaning to be ascribed to them must be that which the words bear, according to the ordinary grammatical meaning of language. That only is matter of accusation which is advisedly taught or maintained by a Clergyman in opposition to the doctrine of the Church. The writer cannot, in a proceeding such as

Feb. 8, 1864.

WILLIAMS v. BISHOP OF SALISBURY and WILSON v. FENDALL. Judgment.

the present, be held responsible for more than the conclusions which are directly involved in the assertion he has made.

With these general remarks we proceed to consider, in the first place, the Charges against Dr. *Williams*.

All the Charges against Dr. *Williams* were rejected by the learned Judge in the Court below, or given up at the hearing before us, except the Charges contained in the 7th and 15th Articles.

Charges against Dr. Williams.

The 7th Article, as reformed, sets forth certain passages extracted from pages 60 and 61, and from pages 76 and 78, of the volume containing Dr. *Williams'* Essay, and charges that in the passages so extracted Dr. *Williams* has advisedly maintained and affirmed that the Bible, or Holy Scripture, is an expression of devout reason, and the written voice of the congregation—not the Word of God, nor containing any special revelation of His truth, or of His dealings with mankind, nor the rule of our faith. Dr. *Williams* has nowhere in terms asserted that Holy Scripture is not the Word of God; and the accusation, therefore, must mean that by calling the Bible 'an expression of devout reason, and therefore to be read with reason in freedom,' and stating that it is 'the written voice of the congregation,' Dr. *Williams* must be taken to affirm that it is not the Word of God.

His views as to Holy Scripture.

Before we examine the meaning of these expressions it is right to observe what Dr. *Williams* has said on the subject of Holy Scripture in the second of the passages included in this Charge. Dr. *Williams* there refers to the teaching of the Church in her Ordination Service as to the abiding influence of 'the Eternal Spirit,' and then uses these words:—'If such a Spirit did not dwell in the Church, the Bible would not be inspired;' and, again, 'The Sacred Writers acknowledge themselves men of like passions with ourselves, and we are promised illumination from the Spirit that dwelt in them.' Dr. *Williams* may not unreasonably contend that the first result of these passages would be thus given:—'The Bible was inspired by the Holy Spirit that has ever dwelt and

still dwells in the Church, which dwelt also in the Sacred Writers of Holy Scripture, and which will aid and illuminate the minds of those who read Holy Scripture trusting to receive the guidance and assistance of that Spirit.'

The words that the Bible is 'an expression of devout reason, and therefore to be read with reason in freedom,' are treated in the Charge as equivalent to these words:—The Bible is the composition or work of devout or pious men, and nothing more; but such a meaning ought not to be ascribed to the words of a writer who, a few lines further on, has plainly affirmed that the Holy Spirit dwelt in the Sacred Writers of the Bible. This context enables us to say that the words 'an expression of devout reason, and therefore to be read with reason in freedom,' ought not to be taken in the sense ascribed to them by the accusation. In like manner we deem it unnecessary to put any interpretation on the words 'written voice of the congregation,' inasmuch as we are satisfied that whatever may be the meaning of the passages included in this Article, they do not, taken collectively, warrant the Charge which has been made that Dr. *Williams* has maintained the Bible not to be the Word of God, nor the Rule of Faith.

Opinion of the Court thereon.

We pass on to the remaining Charge against Dr. *Williams*, which is contained in the fifteenth Article of Charge. The words of Dr. *Williams*, which are included in this Charge, are part of a supposed defence of Baron *Bunsen* against the accusation of not being a Christian. It would be a severe thing to treat language used by an imaginary Advocate as advised speaking or teaching by Dr. *Williams*. Against such a general charge as that of not being a Christian, topics of defence may be properly urged, although not in conformity with the doctrines of the Church of *England*. But, even if Dr. *Williams* be taken to approve of the arguments which he uses for this supposed defence, it would, we think, be unjust to him to take his words as a full statement of his own belief or teaching on the subject of justification.

His alleged views as to justification.

The eleventh Article of Religion, which Dr. *Williams* is accused of contravening, states, 'We are accounted right-

Opinion of the Court.

Feb. 8, 1864.

WILLIAMS v. BISHOP OF SALISBURY and WILSON v. FENDALL Judgment.

eous before God only for the merits of our Lord and Saviour Jesus Christ, by faith, and not for our own works or deservings.' The Article is wholly silent as to the merits of Jesus Christ being transferred to us. It asserts only that we are justified for the merits of our Saviour by faith, and by faith alone. We cannot say, therefore, that it is penal in a Clergyman to speak of merit by transfer as a fiction, however unseemly that word may be, when used in connection with such a subject.

It is fair, however, to Dr. *Williams* to observe that, in the argument at the bar, he repudiated the interpretation which had been put on these words, that 'the doctrine of merit by transfer is a fiction,' and he explained fiction, as intended by him, to describe the phantasy in the mind of an individual, that he has received or enjoyed merit by transfer. Upon the whole we cannot accept the interpretation charged by the Promoter as the true meaning of the passages included in the fifteenth Article of Charge, nor can we consider these passages as warranting the specific Charge, which, in effect, is that Dr. *Williams* asserts that justification by Faith means only the peace of mind, or sense of Divine approval which comes of trust in a righteous God. This is not the assertion of Dr. *Williams*. We are, therefore, of opinion that the judgment against Dr. *Williams* must be reversed.

We proceed to consider the Charges against Mr. *Wilson*.

Charges against Mr. Wilson.

These have been reduced to the eighth and fourteenth Articles of Charge. The other Articles of Charge were either rejected by the Court below, or have been abandoned at the hearing before this Tribunal.

His views as to Holy Scripture.

In the eighth Article of Charge an extract of some length is made from Mr. *Wilson's* Essay, and the accusation is, that in the passage extracted Mr. *Wilson* has declared, and affirmed in effect, that the Scriptures of the Old and New Testaments were not written under the inspiration of the Holy Spirit, and that they were not necessarily at all, and certainly not in parts, the Word of God; and then reference is made to the sixth and twentieth Articles of Religion, to part of the *Nicene* Creed, and to a passage in the Ordination of Priests in the Book of Common Prayer.

Feb. 8, 1864.

WILLIAMS v. BISHOP OF SALISBURY and WILSON v. FENDALL. Judgment.

This Charge involves, therefore, the proposition 'That it is a contradiction of the doctrine laid down in the sixth and twentieth Articles of Religion, in the *Nicene* Creed, and in the Ordination Service of Priests, to affirm that any part of the Canonical Books of the Old or New Testament, upon any subject whatever, however unconnected with religious faith or moral duty, was not written under the inspiration of the Holy Spirit.

The proposition or assertion that every part of the Scriptures was written under the inspiration of the Holy Spirit is not to be found either in the Articles or in any of the Formularies of the Church. But in the sixth Article it is said that 'Holy Scripture containeth all things necessary to salvation,' and the Books of the Old and New Testament are therein termed Canonical. In the twentieth Article the Scriptures are referred to as 'God's Word written;' in the Ordination Service, when the Bible is given by the Bishop to the Priest, it is put into his hands with these words, 'Take thou authority to preach the Word of God;' and in the *Nicene* Creed are the words, 'the Holy Ghost, who spake by the Prophets.'

We are confined by the Article of Charge to the consideration of these materials, and the question is, whether in them the Church has affirmed that every part of every Book of Scripture was written under the inspiration of the Holy Spirit, and is the Word of God.

Certainly this doctrine is not involved in the statement of the sixth Article, that 'Holy Scripture containeth all things necessary to salvation.' But inasmuch as it doth so from the revelations of the Holy Spirit, the Bible may well be denominated 'Holy,' and said to be 'the Word of God,' 'God's Word written,' or 'Holy Writ;' terms which cannot be affirmed to be clearly predicated of every statement and representation contained in every part of the Old and New Testaments.

Opinion of the Court thereon.

The framers of the Articles have not used the word 'inspiration' as applied to the Holy Scriptures; nor have they laid down anything as to the nature, extent, or limits of that operation of the Holy Spirit. The caution

Feb. 8, 1864.

WILLIAMS v. BISHOP OF SALISBURY and WILSON v. FENDALL. Judgment.

of the framers of our Articles forbids our treating their language as implying more than is expressed; nor are we warranted in ascribing to them conclusions expressed in new forms of words involving minute and subtle matters of controversy.

After an anxious consideration of the subject, we find ourselves unable to say that the passages extracted from Mr. *Wilson's* Essay, and which form the subject of this Article of Charge, are contradicted by, or plainly inconsistent with, the Articles and Formularies to which the Charge refers, and which alone we are at liberty to discuss.

We proceed to the remaining Charge against Mr. *Wilson*; namely, that contained in the fourteenth Article.

His view of eternal punishment.

The Charge is, that in the portion of his Essay which is set out in this Article, Mr. *Wilson* has advisedly declared and affirmed in effect that after this life, and at the end of the existing order of things on this earth, there will be no judgment of God, awarding to those men whom He shall then approve everlasting life, or eternal happiness, and to those men whom He shall then condemn everlasting death, or eternal misery; and this position is affirmed to be contrary to the three Creeds, the Absolution, the Catechism, and the Burial and Commination Services.

In the first place we find nothing in the passages extracted which in any respect questions or denies that at the end of the world there will be a judgment of God, awarding to those men whom He shall approve everlasting life, or eternal happiness; but with respect to a judgment of eternal misery, a hope is encouraged by Mr. *Wilson* that this may not be the purpose of God.

Limits of freedom on this point.

We think that it is not competent to a Clergyman of the Church of *England* to teach or suggest that a hope may be entertained of a state of things contrary to what the Church expressly teaches or declares will be the case; but the Charge is that Mr. *Wilson* advisedly declares that after this life there will be no judgment of God, awarding either eternal happiness or eternal misery—an accusation which is not warranted by the passage extracted. Mr. *Wilson* expresses a hope that at the Day of Judgment those men

Feb. 8, 1864.

WILLIAMS v. BISHOP OF SALISBURY and WILSON v. FENDALL. Judgment.

who are not admitted to happiness may be so dealt with as that 'the perverted may be restored,' and all, 'both small and great, may ultimately find refuge in the bosom of the Universal Parent.' The hope that the punishment of the wicked may not endure to all eternity is certainly not at variance with anything that is found in the Apostles' Creed, or the *Nicene* Creed, or in the Absolution, which forms part of the Morning and Evening Prayer, or in the Burial Service. In the Catechism the child is taught that, in repeating the Lord's Prayer, he prays unto God 'that He will keep us from all sin and wickedness, and from our ghostly enemy, and from everlasting death;' but this exposition of the Lord's Prayer cannot be taken as necessarily declaring anything touching the eternity of punishment after the Resurrection.

There remains the Commination Service and the *Athanasian* Creed. The material passage in the Commination Service is in these words:—'O terrible voice of most just judgment, which shall be pronounced upon them, when it shall be said unto them, "Go, ye cursed, into the fire everlasting which is prepared for the Devil and his angels."' In like manner the *Athanasian* Creed declares that they who have done evil shall go into everlasting fire. Of the meaning of these words 'everlasting fire' no interpretation is given in the Formularies which are referred to in the Charge. Mr. *Wilson* has urged in his defence, that the word 'everlasting' in the English translation of the New Testament, and of the Creed of St. *Athanasius*, must be subject to the same limited interpretation which some learned men have given to the original words which are translated by the English word 'everlasting,' and he has also appealed to the liberty of opinion which has always existed without restraint among very eminent English Divines upon this subject.

Bearing on the subject of 42nd Article.

It is material to observe that in the Articles of King *Edward* VI., framed in 1552, the forty-second Article was in the following words:—'All men shall not bee saved at the length.—Thei also are worthie of condemnation who indevoure at this time to restore the dangerouse opinion,

78576

Feb. 8, 1864.

WILLIAMS v. BISHOP OF SALISBURY and WILSON v. FENDALL.

Judgment.

that al menne, be thei never so ungodlie, shall at lengthe bee saved, when thei have suffered paines for their sinnes a certain time appointed by God's justice.'

This Article was omitted from the Thirty-nine Articles of Religion of the year 1562, and it might be said that the effect of sustaining the judgment of the Court below on this Charge, would be to restore the Article so withdrawn.

Opinion of the Court.

We are not required, or at liberty, to express any opinion upon the mysterious question of the eternity of final punishment, further than to say that we do not find in the Formularies, to which this Article refers, any such distinct declaration of our Church upon the subject, as to require us to condemn as penal the expression of hope by a Clergyman that even the ultimate pardon of the wicked, who are condemned in the day of judgment, may be consistent with the will of Almighty God.

No opinion expressed as to the Book 'Essays and Reviews.'

We desire to repeat that the meagre and disjointed extracts, which have been allowed to remain in the reformed Articles, are alone the subject of our judgment. On the design and general tendency of the book called 'Essays and Reviews,' and on the effect or aim of the whole Essay of Dr. *Williams*, or the whole Essay of Mr. *Wilson*, we neither can, nor do pronounce any opinion. On the short extracts before us our judgment is, that the Charges are not proved.

Ruling as to costs.

Their Lordships, therefore, will humbly recommend to her Majesty that the sentences be reversed, and the reformed Articles rejected in like manner as the rest of the original Articles were rejected in the Court below—namely, without costs—but inasmuch as the Appellants have been obliged to come to this Court, their Lordships think it right that they should have the costs of this appeal.

I am desired by the Archbishop of *Canterbury* and the Archbishop of *York*, to state that they do not concur in those parts of this judgment which relate to the seventh Article of Charge against Dr. *Williams*, and to the eighth Article of Charge against Mr. *Wilson*.

[*For note on this case see Appendix, Note D.*]

JOHN MARTIN . . . . . APPELLANT;

AND

THE REVEREND ALEXANDER HERIOT MACKONOCHIE, CLERK . . } RESPONDENT.*

On Appeal from the Arches Court of Canterbury.

In a proceeding against a Clerk in Holy Orders under the *Church Discipline Act*, 3rd and 4th Vic., c. 86, for offending against the Laws Ecclesiastical, (1) in kneeling and prostrating himself before the consecrated elements, and (2) in using lighted candles on the Communion Table during the celebration of the Holy Communion, when such candles were not wanted for light:

Held, on appeal (reversing the decree of the Arches' Court) first, that, according to the Rubric, the celebrant during the Prayer of Consecration in the Order of Administration of the Holy Communion must stand, and not kneel, or prostrate himself before the consecrated elements, during the recital of the Prayer, and that the words 'standing before the Table,' apply to the whole sentence in the Rubric, and to all the acts directed to be done: that, therefore, a change of posture is a violation of the Rubric which imme diately precedes the Prayer of Consecration, and constitutes an ecclesiastical offence within the meaning of the Uniformity Acts, 13 and 14 Car. II., c. 4, ss. 2, 17, and 24, taken in connection with 1 Eliz., c. 2, and is punishable by admonition under section 23 of the latter Act, and does not belong to the category of cases which, according to the preface to the Prayer

* *Present*: The Lord Chancellor (Cairns); the Archbishop of York (Dr. Thomson); Lord Chelmsford; Lord Westbury; Sir William Erle; Sir James William Colvile.

Book, should be referred to the Bishop of the diocese for his direction:

Held, further, that it is not open to a Minister of the Church, or to the Judicial Committee in advising her Majesty, as the highest Ecclesiastical Tribunal of Appeal, to draw a distinction in acts which are a departure from, or a violation of the Rubric, between those which are important, and those which appear to be trivial, the object of the *Act of Uniformity* being, as the preamble expresses it, to produce 'an universal agreement in the public worship of Almighty God:' and the rule laid down by the Judicial Committee in *Liddell* v. *Westerton* that, 'in the performance of the services, rites, and ceremonies ordered by the Prayer Book, the directions contained in it must be strictly observed; no omission and no addition can be permitted' adhered to and affirmed.

Held, secondly, that it is unlawful to place lighted candles on the Communion Table during the celebration of the Holy Communion, when such candles are not wanted for the purpose of giving light, (1) as the use of lighted candles, if intended as a ceremony or ceremonial act, is not among the ceremonies which are retained in the Prayer Book, and must, therefore, be included among those that are abolished and prohibited by 1 Eliz., c. 2, ss. 4 and 27, which statute is applicable to the present Prayer Book, and by which the Royal Injunctions issued in the first year of *Edward* VI. (A.D. 1547), even if they possessed statutable authority, were, so far as they could be taken to authorise the use of lights as a ceremony or a ceremonial act, abrogated and repealed; and (2) if candlesticks and candles were intended to be as ornaments when lighted, and used with reference to a service, in which they are to act as symbols and illustrations, they are not ornaments within the meaning of the Rubric, as they are not prescribed by the authority of Parliament as mentioned in the Rubric to the First Prayer Book; nor are the injunctions of 1547 the 'authority of Parliament' within the meaning of that Rubric; nor are lighted candles subsidiary to the service, for they do not facilitate, much less are they necessary to, the service; nor can a separate and independent ornament, previously in use, be said to be consistent with a Rubric which is silent as to it, and which, by

necessary implication, abolishes what it does not retain.

Construction of the Rubric as to ornaments, in the commencement of the Prayer Book, which provides that 'such ornaments of the Church and of the Ministers thereof, at all times of their ministration, shall be retained and be in use as were in this Church of *Enlgand* by authority of Parliament in the second year of the reign of *Edward* VI.' considered, and the following propositions laid down and decided in *Liddell* v. *Westerton* recognised and affirmed: —

First, that the words 'authority of Parliament' in the Rubric refer to and mean the Act of Parliament 2 and 3 Edw. VI., c. 1, giving Parliamentary effect to the First Prayer Book of *Edward* VI., and do not refer to, or mean Canons or Royal Injunctions having the authority of Parliament made at an earlier period.

Second, that the term 'ornaments' in the Rubric means those articles the use of which in the services and ministrations of the Church is prescribed by that Prayer Book.

Third, that the term 'ornaments' is confined to those articles.

Fourth, that, though there may be articles not expressly mentioned in the Rubric, the use of which would not be restrained, they must be articles which are consistent with, and subsidiary to, the services; as an organ for singing, a Credence Table, from which to take the Sacramental bread and wine, cushions, hassocks, etc.

Nov 17–20, 1868.

MARTIN v. MACKONOCHIE.

Statement.

THIS was a cause of the office of the Judge promoted by the Appellant, a parishioner of the parish of *St. Alban's, Holborn*, in the Diocese of *London*, against the Respondent, the Incumbent and Perpetual Curate of the church of that parish, for having within his said church, and within two years last past from the date of the institution of the cause, offended against the Laws Ecclesiastical in the following matters.

First, by having during the Prayer of Consecration, in the Order of the Administration of the Holy Communion, elevated the Paten above his head, and permitted and

1868.

MARTIN v. MACKONOCHIE.

Statement.

sanctioned such elevation; and taken into his hands the cup, and elevated it above his head during the Prayer of Consecration, and permitted and sanctioned the cup to be so taken and elevated; and knelt or prostrated himself before the Consecrated Elements during the Prayer of Consecration, and permitted and sanctioned such kneeling or prostrating by other Clerks in Holy Orders.

Second, by having used lighted candles on the Communion Table during the celebration of the Holy Communion at times when such lighted candles were not wanted for the purpose of giving light, and permitted and sanctioned the use of lighted candles.

Third, by having used incense for censing persons and things during the celebration of the Holy Communion, and permitted and sanctioned such use of incense, and having unlawfully used incense in and during the celebration of the Holy Communion, and permitted and sanctioned such unlawful use of incense.

Fourth, by having, during the celebration of the Holy Communion, mixed water with the wine used in the administration of the Holy Communion, and permitted and sanctioned such mixing, and the administration to the communicants of the wine and water so mixed.

The cause came before the Arches Court of *Canterbury* by Letters of Request from the Lord Bishop of *London* to the late Dean of the Arches (the Right Honourable Dr. *Lushington*), under the provisions of the *Church Discipline Act*, 3 and 4 Vic., c. 86. By the Letters of Request the Respondent was charged, so far as related to the question raised in the present Appeal, with having offended against the Laws Ecclesiastical by elevating the Elements in the Service of the Holy Communion, as before stated; and 'by bowing, kneeling, or prostrating himself before the Consecrated Elements during, or after, the Prayer of Consecration;' and 'by using lighted candles on the Communion Table during the celebration of the Holy Communion at times when such lighted candles were not wanted for the purpose of giving light, and by permitting and sanctioning such use of lighted candles;' and the Official Principal of

Statement.

the Arches Court was thereby requested to issue a Citation, or Decree, calling upon the Respondent to appear at a certain time and place therein specified, 'to answer to certain articles, heads, positions, and interrogatories touching his soul's health, and the lawful correction and reformation of his manners and excesses, and more especially for having offended against the Laws Ecclesiastical in the matters therein before specified, to be administered to him at the voluntary promotion of the Appellant, and to hear and determine the cause according to the law and practice of the Court.' Such Letters of Request having issued, the Respondent was cited and appeared, whereupon Articles were brought in on behalf of the Appellant, the admission of which was in the first instance opposed, but having been reformed, as directed by the Court, were afterwards admitted. To these Articles a responsive plea was filed by the Respondent, for the most part admitting the facts as pleaded, but denying that any offence against the Ecclesiastical Law had been committed. The articles and plea, material to the two points raised by the Appeal, are set out in the judgment.

The cause was then heard before Sir *Robert Phillimore*; two witnesses only were examined on behalf of the Appellant. With reference to the kneeling or prostrating, it appeared that the Respondent, when himself officiating in the order for the Administration of the Holy Communion, twice knelt down, or prostrated himself, before the Communion Table while saying the Prayer of Consecration, once after the consecration of the bread, and again after the consecration of the cup, and that another officiating Minister did the same in his presence. With reference to the use of lighted candles, the facts, as alleged in the Articles, were substantially admitted.

Decision in Court of the Arches.

On *March*, 28,1868, Sir *Robert Phillimore*, by his Interlocutory Decree, or Sentence, pronounced that all the Articles given in, or admitted in the cause, except the sixth and twelfth therein specified, were established, and that the Respondent had offended against the Statute Laws, Constitutions, and Canons of the Church of *England* in the par-

1868.

MARTIN v. MACKONOCHIE.

Statement.

ticular matters alleged, and set forth in the Articles, in manner as in the Decree was thereinafter mentioned; and monished the Respondent to abstain for the future from the elevation of the cup and paten during the administration of the Holy Communion, as also from the use of incense, and from the mixing water with the wine during the administration of the Holy Communion, as pleaded in the Articles; but declined to pronounce, that the Respondent had offended against the Statute Law, and the Constitutions, and Canons Ecclesiastical, by having knelt or prostrated himself before the Consecrated Elements during the Prayer of Consecration, and by having permitted and sanctioned such kneeling or prostrating by other Clerks in Holy Orders; and omitted or declined to admonish him against so offending in future; and omitted or declined to pronounce, that the Respondent had offended against the Statute Law, and the Constitutions, and Canons Ecclesiastical, by having used lighted candles on the Communion Table, during the celebration of the Holy Communion, at times when such lighted candles were not wanted for the purpose of giving light, and by having permitted and sanctioned such use of lighted candles, and omitted or declined to admonish him against so offending in future; and declined to condemn the Respondent in the costs incurred in the cause on the part and behalf of the Appellant. *

Appeal.

This Decree, or Sentence, was the subject of the present Appeal, but was limited to the kneeling and prostrating before the Consecrated Elements and the use of lighted

* A complete report of the argument in the Court of Arches, with extracts from the authorities both legal and Ecclesiastical, cited and referred to by Counsel on either side, as taken and verified by the short-hand writers, was given in evidence before the Ritual Commissioners, and with the judgment of the learned Dean of the Arches, containing his own notes and illustrations, is to be found in the Appendix to their Second Report, April 1868. That Appendix also contains verified copies of Injunctions and Visitation Articles from A.D. 1561 to 1730. The reader is referred to the source above mentioned, which, with the abstract of the pleadings given in *Law Reports*, 2 Adm. and Eccles., p. 117, and the judgment of the learned Judge, constitutes a complete history of the case in the Arches Court.

candles, and to the refusal to allow costs; the decree of the Court below in other respects was acquiesced in by both parties.

Mr. *A. J. Stephens*, Q.C., and Mr. *Archibald* (Mr. *Coleridge*, Q.C., Mr. *Traill*, and Mr. *Droop* with them), for the Appellant:—

Every Clerk in Holy Orders of the United Church of *England* and *Ireland*, in administering the Sacraments and other rites and ceremonies of the Church, is bound to use the form and order prescribed for the same in the Book of Common Prayer, without any addition, alteration, or omission; this was so held and solemnly decided in the case of *Liddell* v. *Westerton* by this Tribunal in the year 1857. The kneeling or prostrating before the Consecrated Elements, and the use of lighted candles, as proved and admitted in this cause, are additions to, or alterations of, the form and order prescribed. The elevation of the paten and cup during the Prayer of Consecration having been discontinued by the Respondent during the pendency of the cause (though disapproved of, and declared illegal by the Judge of the Arches Court, formed no part of his judgment), is not in question in this Appeal. The prostrating before the Elements was held by the Judge to be a matter not of criminal procedure, but within the discretion and direction of the Ordinary.

First, then, with respect to the kneeling or prostration. We insist that the kneeling adopted by the Respondent was irregular, and improper; that it was used, resorted to, repeated, and prolonged at times, and in a manner not directed, or sanctioned by the Rubric. The judgment of the learned Judge of the Arches on this point is very brief; he seems to question the proofs, though the testimony of the witnesses is unimpeached, and the charge contained in the Articles was admitted by the Respondent's plea. His judgment appears, however, to rest chiefly on his view of the Rubric to the General Confession in the Service of the Holy Communion, which, though it does not give precise directions, that the celebrant shall kneel at the time of Consecration, yet directs the Confession to be made by one

1868.

MACKONOCHIE. Argument.

of the Ministers, both he and all the people kneeling; and he seems to think, that the kneeling posture of the Minister, when consecrating the Elements, is allowable within the meaning of that Rubric, and that this inference and conclusion is illustrated by the fact, that, at the *Savoy* Conference, when the Puritans demanded a more specific Rubric touching the kneeling at the Communion, no notice of this request was taken by the Bishops (*Cardwell's* Conferences, pp. 275, 363); he infers, therefore, that the position of the Minister at such times is discretionary on his part, or if not, the error imputed to the Respondent is not such an offence as could form the subject of a criminal prosecution, but that if it was an offence, it belonged to the category of those cases, which should be referred to the Bishop, in order that he might exercise jurisdiction according to the Rubric. This, we submit, is a wholly erroneous view of the Rubric, contrary to the *Act of Uniformity*, 14 Car. II., c. 4, as well as the previous statutes, 2 and 3 Edw. VI., c. 1. and 1 Eliz., c. 2. In the argument in the Court below, the kneeling and prostration was connected with the elevation of the Elements, and the authorities referred to respecting the elevation applied equally to the posture; but the Rubric, the authorities, and the almost universal custom are all entirely against the practice of such kneeling and prostration. The effect of the directions in the Rubric is, that the Minister is not at liberty to change his position according to his own fancy, but must follow strictly the directions there set forth, and especially, as at the time of the Consecration of the Elements, he is directed to remain in a standing position, and not to kneel or prostrate himself, as has been the practice of the Respondent.

Secondly. The learned Judge of the Court below treated the question as to the use of lighted candles on the Communion Table, during the celebration of the Holy Communion, as falling within the rules regarding ornaments, as expressly sanctioned by the Laws of the Church; and, after observing that 'there is no direct prohibition of this ornament of Divine Service,' he proceeds to enquire whether 'the use of lights on the Holy Table falls under the cate-

gory of things indirectly, or by necessary implication, prohibited;' and if not, that they might be treated as 'innocently subsidiary to Divine worship.' We submit, however, that lighted candles are not ornaments of the Church within the legal meaning of the word '*ornamentum*,' as interpreted by this Tribunal in *Liddell* v. *Westerton*. But the learned Judge of the Arches Court, relying, for the retention of those we contend against, on the Royal Injunctions of 1547 (Edw. VI.; *Cardwell's* Doc. Ann., pp. 5, 6), arrives at the following conclusion:—That inasmuch as he thinks these Injunctions were issued under statutable authority, and have not been directly repealed by the like authority, 'that it is lawful to place two lighted candles on the Holy Table during the time of the Holy Communion, for the signification, in the language of the Injunctions, "that Christ is the very true Light of the world."' Now we contend that whether these Injunctions were lawfully issued under statutable authority or not, they have been subsequently abrogated by like authority, and were wholly repealed in the same year they were issued, by the *Act of Uniformity*, 1 Edw. VI., c. 12, and have never since been revived, either by the *Uniformity Act* of 1 Eliz., c. 2, or the last *Uniformity Act*, 14 Car. II., c. 4.

Mr. *W. M. James*, Q.C., and Dr. *Deane*, Q.C. (with them Mr. *Prideaux*, Q.C., Dr. *Tristram*, and Mr. *E. Charles*), for the Respondent:—

The judgment of the learned Dean of the Arches is correct. The elevation of the Elements, and the alleged prostration of the Respondent, are one and the same offence; and the Respondent having of his own accord discontinued the elevation, the grounds of the Charge have ceased. The kneeling at improper seasons, of which the Respondent is accused, has reference only to the prostration before the Consecrated Elements, and cannot be maintained as a separate charge. The other offence charged is the use of lighted candles during the celebration of the Holy Communion. But candlesticks on the Communion Table have been already declared legal by this Tribunal (*Liddell* v. *Westerton*), and allowable within the terms of the Rubric

1868.

MARTIN v. MACKONOCHIE.

Argument.

relating to ornaments; the using them by placing lights in them cannot therefore be an offence against the Ecclesiastical Laws, unless it be shown that some special significance was intended which is contrary to Ecclesiastical Law. No such significance is shown, and the learned Judge has rightly held them to be legal by the injunctions of 1547. Having been declared legal by the Royal Injunctions of 1547, made by the authority of the *Supremacy Act*, 26 Hen. VIII., c. 4, they have not been prohibited, or made illegal, by any subsequent statute, or by either of the *Acts of Uniformity*—1 Eliz., c. 2, or the 14 Car. II., c. 4.

Mr. *Stephens* in reply.

Their Lordships' judgment was deferred, and was now (Dec. 23) pronounced by

LORD CAIRNS.*

Judgment.

The case of *Martin* v. *Mackonochie*, commenced before the Bishop of *London*, was, under the provisions of the *Clergy Discipline Act*, sent by the Bishop to the Court of the Archbishop of *Canterbury* for trial in the first instance; and, having been fully heard before the Judge of the Arches Court, resulted in a decree made on the March 28, 1868.

Mr. *Mackonochie*, the Clerk in Holy Orders against whom these proceedings were directed, was charged with four offences against the Laws Ecclesiastical—viz.—

Charges against Respondent.

First. The elevation during, or after, the Prayer of Consecration, in the Order of the Administration of the Holy Communion, of the Paten and Cup, and the kneeling or prostrating himself before the Consecrated Elements.

Second. Using lighted candles on the Communion Table during the celebration of the Holy Communion, when such candles were not wanted for the purpose of giving light.

Third. Using incense in the celebration of the Holy Communion.

* Subsequent to the hearing of the Appeal, and before judgment was pronounced, Lord Cairns had resigned the Great Seal.

1868.

MARTIN v. MACKONOCHIE.

Judgment.

Fourth. Mixing water with the wine used in the administration of the Holy Communion.

The learned Judge of the Arches Court, by his decree, sustained the third and fourth of these charges, and admonished Mr. *Mackonochie* to abstain for the future from the use of incense, and from mixing water with wine, as pleaded in the Articles. Against this part of the decree there is no appeal.

Decree of the Arches Court.

The second charge, as to lights, was not sustained, the learned Judge holding that it was lawful to place two lighted candles on the Communion Table during the time of the Holy Communion.

Against this the Promoter has appealed.

As to the first charge, Mr. *Mackonochie*, while admitting the elevation of the Consecrated Elements at the times and in the manner alleged, pleaded that he had discontinued the practice before the institution of the suit. The learned Judge, therefore, admonished Mr. *Mackonochie* not to recur to the practice; but as to the other part of the charge—namely, the kneeling and prostrating himself before the Consecrated Elements—the learned Judge held, that if Mr. *Mackonochie* had committed any error in that respect, it was one which should not form the subject of a criminal prosecution, but should be referred to the Bishop, in order that he might exercise his discretion thereon.

The Promoter appeals from the latter part of the decision of the learned Judge in this charge, and he also complains in his Appeal that the Defendant was not ordered to pay the costs of the suit.

The questions thus raised by the Appeal were very fully and ably argued before this Tribunal, and their Lordships have now to state their reasons for the advice, which they propose humbly to offer to her Majesty.

They will advert first to the charge of kneeling before the Consecrated Elements.

Charge of kneeling before the Consecrated Elements.

It is necessary to refer to the whole of the charge on this head, as contained in the Third and Fourth Articles, although some of the acts charged are said to have been discontinued before the suit commenced.

1868.

MARTIN v. MACKONOCHIE. Judgment.

Articles of Charge.

These Articles run thus:—

'Third. That the said *Alexander Heriot Mackonochie* has, in his said Church, and within two years (to wit, on Sunday, December 23, on Christmas Day last past, and on Sunday, December 30, all in the year of our Lord 1866), during the Prayer of Consecration in the Order of the Administration of the Holy Communion, elevated the Paten above his head, and permitted and sanctioned such elevation; and taken into his hands the Cup, and elevated it above his head during the Prayer of Consecration aforesaid, and permitted and sanctioned the Cup to be so taken and elevated; and knelt or prostrated himself before the Consecrated Elements during the Prayer of Consecration, and permitted and sanctioned such kneeling or prostrating by other Clerks in Holy Orders.

'Fourth. That such elevation of the Paten, and such taking and elevation of the Cup, and such kneeling and prostrating, are severally unlawful additions to, and variations from, the form and order prescribed and appointed by the said Statutes, and by the said Book of Common Prayer, and Administration of the Sacraments, and other rites and ceremonies of the Church, and are contrary to the said Statutes, and to the 14th, 36th, and 38th of the said Constitutions and Canons, and also to an Act of Parliament passed in a session of Parliament, holden in the 13th year of Queen *Elizabeth*, chap. 12, and to the 25th and 28th of the Articles of Religion therein referred to.'

Answer of Respondent.

Mr. *Mackonochie's* answer to these Articles is as follows:—

'3. Whereas in the third Article, given in and admitted as amended in this cause, it is pleaded that the said *Alexander Heriot Mackonochie* has—to wit, on Sunday, December 23, on Christmas Day last past, on Sunday, December 30, all in the year 1866—during the Prayer of Consecration in the Order of the Administration of the Holy Communion, elevated the Paten above his head, and permitted and sanctioned such elevation, and taken into his hands the Cup and elevated it above his head during the Prayer of

1868.

MARTIN v. MACKONOCHIE. Judgment.

Consecration aforesaid, and permitted and sanctioned the Cup so to be taken and elevated, and knelt or prostrated himself before the Consecrated Elements during the Prayer of Consecration, and permitted and sanctioned such kneeling or prostration by other Clerks in Holy Orders. Now the same is in part untruly pleaded, for the party proponent alleges that, while he admits that the said *Alexander Heriot Mackonochie* did on the said two Sundays and on Christmas Day, during the Prayer of Consecration, kneel, and sanction kneeling by other Clerks, before the Lord's Table, he denies that the said *A. H. Mackonochie*, did on the said two Sundays, and on the said Christmas Day, kneel, or prostrate himself, before the Consecrated Elements, or permit and sanction such kneeling or prostration by other Clerks in Holy Orders, as in the third Article pleaded. And he further alleges, that while he admits, that he did on the said two Sundays and Christmas Day, in the said third Article mentioned, elevate, and sanction the elevation by other Clerks of the Paten and Cup above his head, as in the said third Article pleaded, yet that such elevation of the Paten and Cup has been wholly discontinued by the said *Alexander Heriot Mackonochie* during the administration of the Holy Communion, ever since the said December 30, 1866, and long prior to the institution of this suit. That such practice was discontinued in consequence of legal advice, and in compliance with the expressed wish of the Lord Bishop of the Diocese of *London*, and with a resolution of Convocation, as was well known to the promoter of this suit before he instituted the same.'

Preliminary objection.

Before turning to the evidence in support of this charge, it will be proper to consider a preliminary objection which was taken to the Articles, and to the Letters of Request and Citation, by which they were preceded.

It was said that, although the Articles alleged that the Respondent 'knelt or prostrated himself before the Consecrated Elements during the Prayer of Consecration,' the Letters of Request and Citation were for 'bowing, kneeling, or prostrating himself before the Consecrated Elements during or after the Prayer of Consecration.' It was con-

1868.

MARTIN v. MACKONOCHIE. Judgment.

tended that the citation showed no offence, for it might be taken, as in an indictment, in the sense most favourable to the accused, and as affirming nothing more than that he bowed after the Prayer of Consecration, which, it was said, would or might be innocent. And the Articles, it was argued, by omitting this alternative, were a departure from the Citation.

Overruled by the Court.

To this it might be sufficient to reply that the objection taken to this Citation—a Citation which it is not disputed does contain other charges cognizable by the Ecclesiastical Court—is an objection of a strictly technical character, and one, which would be waived by the appearance of the Respondent as he did appear, without protest, and by praying for Articles. But, passing from this, it is be observed that the supposed analogy between the Citation and an Indictment, on which this objection is founded, entirely fails. The *Act of Uniformity*, 1 Eliz., cap. 2, contemplates two modes of procedure for enforcing its provisions—one, by indictment under section 4, and the other by process for admonition before the Ordinary under section 23; and it is under the latter, and not the former section, that the present proceedings are taken. Moreover, in the case of an Indictment followed by judgment, the Indictment and judgment become the record, and the judgment is read with reference to the Indictment; and if the Indictment is open to a construction which is innocent, and would not sustain a judgment, the judgment would be vicious and must be arrested; whereas the Citation is followed by articles, which in turn are met by a plea; and the Court, after hearing evidence, defines by its sentence how much of the charge it considers to be relevant and to have been proved, and thereby corrects any excess of averment in the Citation.

The preliminary objection, therefore, on this charge their Lordships feel themselves obliged to repel.

Evidence for the charge.

It is necessary now to examine the evidence adduced in support of the charge; and in doing this, and in considering the character of the charge itself, their Lordships will confine their attention to the conduct and acts of the Re-

1868.

MARTIN v. MACKONOCHIE. Judgment.

spondent, as the celebrating or consecrating Minister. The allegations and proof as to 'sanctioning and permitting other Clerks' are so vague that no weight could be, and in the argument little weight was, attempted to be given to them.

Mr. Beames.

The chief witness in support of the charge is Mr. *Beames*. He has not been cross-examined, and no evidence has been adduced for the Respondent. The statement of Mr. *Beames* may therefore be taken to be uncontroverted. He speaks of December 23 and 25, 1866. On both these occasions the Respondent was the celebrant at the Communion Service. The effect of the answers of Mr. *Beames* may be stated to be, that the Respondent commenced to read the Prayer of Consecration standing; that on reaching the words 'the same night that He was betrayed' he elevated the paten above his head, returned it to its place on the Communion Table, and then knelt on his knees towards the Table, inclining or prostrating his head towards the ground; that he then rose and resumed the Prayer; that when, in the further course of the Prayer, he took the chalice, he elevated it above his head, as he had done the paten, replaced it on the Communion Table, and knelt or prostrated himself as before.

The elevation of the Elements has, as already said, been discontinued; and as to the kneeling after the consecration of the chalice, it might possibly be suggested that it was a kneeling after finishing the Prayer of Consecration; and with reference to the next part of the Service, in which the celebrant becomes himself the recipient. Omitting, therefore, for the present the elevation and the second kneeling, the evidence remains that the Respondent, after commencing the Prayer of Consecration standing, paused in the middle of the Prayer, knelt down, inclining, or prostrating, his head towards the ground, and then, rising up again, continued the Prayer standing.

Rubric which applies considered.

In order to bring the conduct of the Respondent on this head to the test of Ecclesiastical Law, it is proper now to turn to the Rubric of the Order of the Administration of the Holy Communion.

1868.

MARTIN v. MACKONOCHIE.

Judgment.

The Lord's Prayer and the Collect, with which the Service commences, are to be said by the Priest 'standing at the north side of the Table.'

The Priest is then to turn to the people, and rehearse distinctly all the ten commandments, 'the people still kneeling,' implying that the Priest is still to stand.

This is to be followed by one of the Collects for the Sovereign, 'the Priest standing as before,' and by the Collect for the day.

The Priest is then to read the Epistle and Gospel, and to say the Creed, during which no change of attitude is indicated.

After the sermon, when the Priest has returned to the Lord's Table, the sentences of the Offertory, the Prayer for the Church Militant, and the Exhortations are to be 'said' by the Priest, without any direction as to change of posture; and then, at the Confession, he, as well as all the people, is directed to kneel.

For the Absolution and the sentences which follow, the Priest is directed to stand up, and to turn himself to the people; for the words, 'It is very meet,' etc., and the 'Prefaces,' he is to turn to the Lord's Table, and he is then to kneel down at the Lord's Table, and, in the name of all the recipients, say the prayer, 'We do not presume,' etc.

Construction of Rubric before the Prayer of Consecration.

The Rubric before the Prayer of Consecration then follows, and is in these words:—'When the Priest, standing before the Table, hath so ordered the bread and wine that he may with the more readiness and decency break the bread before the people, and take the cup into his hands, he shall say the Prayer of Consecration, as follows.'

Their Lordships entertain no doubt on the construction of this Rubric that the Priest is intended to continue in one posture during the Prayer, and not to change from standing to kneeling, or *vice versâ*; and it appears to them equally certain that the Priest is intended to stand and not to kneel. They think that the words, 'standing before the Table' apply to the whole sentence; and they think this is made more apparent by the consideration that acts are to

1868.

MARTIN v. MACKONOCHIE.

Judgment.

And application.

be done by the Priest before the people as the Prayer proceeds (such as taking the paten and chalice into his hands, breaking the bread, and laying his hand on the various vessels) which could only be done in the attitude of standing.

'This being, in their Lordships' opinion, the proper construction of the Rubric, it is clear that the Respondent, by the posture, or change of posture, which he has adopted during the Prayer, has violated the Rubric, and committed an offence within the meaning of the 13 and 14 Car. II., cap. 4, secs. 2, 17, 24, taken in connection with the 1 Eliz., cap. 2, and punishable by admonition under sec. 23 of the latter statute. It was contended on behalf of the Respondent that the act complained of was one of those minute details which could not be taken to be covered by the provisions of the Rubric; that the Rubric could not be considered as exhaustive in its directions, for no order could be shown in it requiring the celebrating Minister to kneel while himself receiving the bread and wine; and that there was no charge or evidence against the Respondent, that in kneeling after the consecration, any adoration of the Sacrament was intended.

Limits of freedom in matters of Rubrical observance

Their Lordships are of opinion that it is not open to a Minister of the Church, or even to their Lordships in advising her Majesty, as the highest Ecclesiastical Tribunal of Appeal, to draw a distinction in acts which are a departure from, or violation of, the Rubric, between those which are important and those which appear to be trivial. The object of a Statute of Uniformity is, as its preamble expresses, to produce 'an universal agreement in the public worship of Almighty God,' an object which would be wholly frustrated if each Minister, on his own view of the relative importance of the details of the Service, were to be at liberty to omit, to add to, or to alter any of those details. The rule upon this subject has been already laid down by the Judicial Committee in *Westerton* v. *Liddell*, and their Lordships are disposed entirely to adhere to it:—'In the performance of the services, rites, and ceremonies ordered by the Prayer Book, the directions contained in it

1868.

MARTIN v. MACKONOCHIE. Judgment.

must be strictly observed; no omission and no addition can be permitted.' (*Ante*, p. 74.)

There would, indeed, be no difficulty in showing, that the posture of the celebrating Minister during all the parts of the Communion Service was, and that for obvious reasons, deemed to be of no small importance in the changes introduced into the Prayer Book, at and after the Reformation. The various stages of the Service are, as has already been shown, fenced and guarded by directions of the most exact kind as to standing and kneeling, the former attitude being prescribed even for prayers, during which a direction to kneel might have been expected. And it is not immaterial to observe, that whereas in the first Prayer Book of King *Edward* VI. there was contained at the end a Rubric in these words:—'As touching kneeling, crossing, holding up of hands, knocking upon the breast, and other gestures, they may be used or left, as every man's devotion serveth without blame;' this Rubric was, in the second Prayer Book of *Edward* VI., and in all the subsequent Prayer Books, omitted.

'All meekly kneeling' refers to celebrant as well as to people.

The argument against the completeness of the directions as to posture, derived from the supposed absence of any order, that the celebrant shall kneel while himself receiving, does not appear to their Lordships to be well founded. In the Rubric as to the reception of the bread and wine, the words 'all meekly kneeling' apply, as their Lordships think, to the celebrant, as well as to other Clerks, and to the people. And this is made more clear by the Rubric termed the 'Black Rubric,' added at the end of the Service.

It is true, as was contended, that there is no charge against the Respondent that the kneeling complained of was intended as an act of adoration of the Sacramental Elements. Such a charge, involving, as it would, an enquiry into sentiments and feelings, of which no Tribunal can adequately judge, would be difficult of proof; and the rubrical enactments appear to have been wisely confined to prescribing an order of service free from those outward movements, which had become more or less associated with errors in doctrine, which at the Reformation were renounced. If

1868.

MARTIN v. MACKONOCHIE.

Judgment.

this order is departed from, it is, as their Lordships think, unnecessary to enquire into the motive by which the departure has been occasioned.

Another argument urged on behalf of the Respondent should also be noticed. Mr. James contended with great ability that the charge, as to kneeling during the Prayer of Consecration, was made in connection with the charge as to the elevation of the Sacrament, and that the charge of kneeling was only an aggravation of that elevation, which had been discontinued. This, no doubt, is so; but the kneeling under the circumstances described being itself, as their Lordships think it is, a violation of the Rubric, they do not think, that the judgment of the Court should the less be passed upon it, because the other part of the charge—namely, that as to the elevation—is no longer resisted.

Kneeling a violation of the Rubric.

It only remains, on this part of the case, to advert to the very learned and elaborate judgment of the Dean of the Arches. That learned Judge states, that the Rubric does not give precise directions that the celebrant should kneel, at the times, when it appears that the Respondent does kneel; that he is far from saying it is not legally competent to him to adopt this attitude of devotion; and that it cannot be contended, that, at some time or other, he must not kneel during the celebration, although no directions as to his kneeling at all are given by the Rubric.

Their Lordships, however, think, as they read the Rubric, that directions as to the celebrant kneeling at a particular time of the celebration—namely, when he himself receives the Sacrament—are given, and that at the time when it appears that the Respondent kneels—namely, during the Prayer of Consecration—the directions in the Rubric are precise, that he should stand, and not kneel.

The learned Judge further observes, that if Mr. *Mackonochie* has committed any error in this respect, it is one which should not form the subject of a criminal prosecution, but belongs to the category of cases, which should be referred to the Bishop. This category the learned Judge had previously defined to be—'Things neither ordered, nor

1868.

MARTIN v. MACKONOCHIE.

Judgment.

prohibited expressly, or by implication, but the doing, or use of which must be governed by the living discretion of some person in authority.'

And as to cases in this category, the learned Judge considered that, according to the Preface to the Prayer Book, the 'parties that doubt or diversely take anything should always resort to the Bishop of the diocese.'

Kneeling is a question for the Court.

Their Lordships do not think it necessary to consider minutely the cases to which, or the manner in which, this direction in the Preface to the Prayer Book is applicable, inasmuch as in their opinion the charge against the Respondent, with which they are now dealing, involves what is expressly ordered and prohibited by the Rubric, and is therefore a matter, in which the Bishop could have no jurisdiction to modify, or dispense with the rubrical provisions.

Result as to kneeling or prostration.

On the whole, their Lordships are of opinion that the charge against the Respondent of kneeling during the Prayer of Consecration has been sustained, and that he should be admonished, not only not to recur to the elevation of the paten, and the cup, as pleaded in the third Article, but also to abstain for the future from kneeling, or prostrating himself before the Consecrated Elements during the Prayer of Consecration, as in the same Article also pleaded.

Charge as to lighted candles.

The other charge, involved in this Appeal, is that of using lighted candles on the Communion Table, during the celebration of the Holy Communion, when such candles are not wanted for the purpose of giving light.

This charge is contained in the fifth and sixth Articles, which are as follows:—'Fifth. That the said *Alexander Heriot Mackonochie* has in his said Church, and within two years last past—to wit, on Sunday, December 23, on Christmas Day last past, on Sunday, December 30, all in the year of our Lord 1866, and on Sunday, January 13, in the year of our Lord 1867—used lighted candles on the Communion Table during the celebration of the Holy Communion, at times when such lighted candles were not wanted for the purpose of giving light, and permitted and sanctioned such

use of lighted candles. Sixth. That the use of such lighted candles is an unlawful addition to, and variation from the form and order prescribed and appointed by the said Statutes, and by the said Book of Common Prayer, and Administration of the Sacraments, and other rites and ceremonies of the Church, and is contrary to the said Statutes, and to the 14th, 36th, and 38th of the said Constitutions and Canons.'

Answer of Respondent.

The responsive plea of Mr. *Mackonochie* on this head is as follows:—'Fifth. Whereas it is pleaded in the fifth Article that the said *Alexander Heriot Mackonochie* has in his said Church, and within two years last past—to wit, on Sunday, December 23, on Christmas Day last past, and on Sunday, December 30, all in the year of our Lord 1866; and on Sunday, January 13, in the year of our Lord 1867—used lighted candles on the Communion Table, during the celebration of the Holy Communion, at times when such lighted candles were not wanted for the purpose of giving light, and permitted and sanctioned such use of lighted candles. Now, the same is in part untruly pleaded, for the party proponent alleges that on the said three Sundays, and Christmas Day, in the said fifth Article mentioned, the said lighted candles were not placed on the Communion Table, but upon a narrow movable ledge of wood resting on the said Table, and that the said candles were so placed and kept lighted, not during the celebration of the Holy Communion only, as falsely suggested in the said fifth Article, but also during the whole of the reading of the Communion Service, including the Epistle and Gospel, and during the singing after the reading of the Nicene Creed, and during the delivery of the sermon. Sixth. That he denies the use of such lighted candles is an unlawful addition to, and variation from the form and order prescribed and appointed by the said Statutes, and by the said Book of Common Prayer and Administration of the Sacraments, and other rites and ceremonies of the Church, and is contrary to the said Statutes, and to the 14th, 36th, and 38th of the said Constitutions and Canons, as in the said sixth Article alleged.'

1868.

MARTIN v. MACKONOCHIE.

Judgment.

The facts, therefore, on this part of the case appear to be that the Respondent uses two lighted candles during, with reference to, and as an accompaniment of, the Communion Service, and not for the ordinary purpose of giving light, and that these candles are placed on a ledge of wood which is placed on the Communion Table.

Are lighted candles ornaments, or part of a ceremony?

The Dean of the Arches seems to have considered that all the practices complained of before him, including this use of lighted candles, were ceremonies. The Respondent, in the argument of his Counsel at the bar, appeared to prefer to treat the question as one of ornament, and Mr. *James* said he considered the lighted candles 'part of the symbolical decoration of the altar.'

If it were necessary to decide which of these views is correct, their Lordships would feel disposed to agree with the Dean of the Arches, that however candles and candlesticks may *per se* be looked upon as a part of the furniture or ornaments of the church, taking the word ornaments in the larger sense assigned to it by this Committee in *Westerton* v. *Liddell*, yet the lighting of the candles and the consuming them by burning throughout, and with reference to a service, in which they are to act as symbols and illustrations, is itself either a ceremony, or else a ceremonial act forming part of a ceremony, and making the whole ceremony a different one from what it would have been had the lights been omitted.

Testimony of Council of Trent;

The Council of Trent (22nd Session, 5th chapter), *De Missæ ceremoniis, et ritibus*, says, '*Ceremonias item adhibuit ut mysticas benedictiones, lumina, thymiamata, vestes, aliaque multa.*'

of Dr. Donne.

Dr. Donne also in his Sermons (Fol. Ed., p. 80, 1640), writing in support of the use of these lights, calls it a ceremony. He says, 'It is in this ceremony of lights as it is in other ceremonies.'

Distinction between ornaments and ceremonies.

There is a clear and obvious distinction between the presence in the church of things inert and unused, and the active use of the same things as a part of the administration of a sacrament, or of a ceremony. Incense, water, a

1868.

MARTIN v. MACKONOCHIE.

Judgment.

banner, a torch, a candle and candlestick, may be parts of the furniture, or ornaments of a church; but the censing of persons and things, or, as was said by the Dean of Arches, the bringing in incense at the beginning, or during the celebration, and removing it at the close of the celebration of the Eucharist; the symbolical use of water in Baptism, or its ceremonial mixing with the Sacramental wine; the waving, or carrying the banner; the lighting, cremation, and symbolical use of the torch or candle; these acts give a life and meaning to what is otherwise inexpressive, and the act must be justified, if at all, as part of a ceremonial law.

If lighted candles be a ceremony, it is abolished by the Prayer Book.

If the use of lighted candles in the manner complained of be a ceremony, or ceremonial act, it might be sufficient to say that it is not—nor is any ceremony in which it forms a part—among those retained in the Prayer Book, and it must therefore be included among those that are abolished; for the Prayer Book in the Preface divides all ceremonies into these two classes: those which are retained are specified, whereas none are abolished especially, or by name; but it is assumed that all are abolished which are not expressly retained.

Lighted candles viewed as part of a ceremony prohibited by Elizabeth's Act of Uniformity.

Passing however from this, the use of lighted candles, if a ceremonial act or part of a ceremony, would be prohibited by Queen *Elizabeth's Act of Uniformity*, 1 Eliz. c. 2, sec. 4, which is now applicable to the present Prayer Book, and which makes it penal to use any other rite, ceremony, order, form, or manner of celebrating the Lord's Supper . . . . than is mentioned and set forth in the said Book: and any prior authority for the practice, from usage or otherwise, would be avoided by sec. 27, which enacts that 'all Laws, Statutes, and Ordinances, whereby any other service, administration of Sacraments, or Common Prayer is limited, established, or set forth to be used within this realm, shall from henceforth be utterly void and of none effect.'

As to the argument that the use complained of is at most only part of a ceremony, their Lordships are of opinion

1868.

MARTIN v. MACKONOCHIE.

Judgment.

that when a part of a ceremony is changed the integrity of the ceremony is broken, and it ceases to be the same ceremony.

The learned Judge of the Arches Court was of opinion that these lights were ordered by injunctions having statutable authority, which injunctions had not been directly repealed; that they were primitive and Catholic in their origin, Evangelical in their proper symbolism, purged from all superstition and novelty by the very terms of the injunction, which ordered their retention in the Church, and that, therefore, it was lawful to place them on the Holy Table, during the time of the Holy Communion 'for the signification that Christ is the very true Light of the world.'

Injunctions of 1547 do not warrant lighted candles as ceremonies,

The authorities cited show beyond all doubt the very ancient and general use in the Church of these symbolical lights; and the injunction, to which the learned Judge refers, is the third of those issued A.D. 1547, in the first year of the reign of King *Edward* VI. By this it was ordered that images should be taken down and destroyed, and that spiritual persons should suffer no torches or candles to be set aforo any image or picture, but only two lights upon the High Altar, before the Sacrament, which, for the signification that Christ is the very true Light of the world, they should suffer to remain.

It would deserve consideration how far under any circumstances this injunction could now be held operative, having regard to the words 'upon the High Altar, before the Sacrament,' and to the distinction pointed out by this Committee in *Westerton* v. *Liddell*, and *Parker* v. *Leach*,* between the Sacrificial Altar and the Communion Table. But, without dwelling on this, and without stopping at this place to enquire into the nature of the authority, under which the injunctions of 1547 were issued, their Lordships are clearly of opinion that the injunction in question, so far as it could be taken to authorise the use of lights as a ceremony or ceremonial act, was abrogated or repealed by the Act 1 Eliz., c. 2, particularly by sec. 27, already mentioned, and by the present Prayer Book and *Act of Uniformity*, and that the use of lighted

* For statement of this case see Appendix, Note C.

candles, viewed as a ceremony or ceremonial act, can derive no warrant from that injunction.

1868.

MARTIN v. MACKONOCHIE.

Judgment.

Reference was made in the argument for the Respondent to a Constitution of the Council of *Oxford*, under *Walter*, Archbishop of *Canterbury*, A.D. 1322. That Constitution is in these words:—'*Tempore quo missarum solemnia peraguntur, accendentur duæ candelæ, vel ad minus una;*' and is apparently a repetition of the earlier Constitution of A.D. 1222 (Wilkins, Concilia, vol. i., p. 595):—'*Tempore quo missarum solemnia peraguntur, accendentur duæ candelæ, vel ad minus una cum lampade.*' As to these Constitutions, it is sufficient to say that, in their Lordships' opinion, they must be taken, if of force at the time of passing of any of the Acts of Uniformity, to have been repealed by those Acts.

nor do the Constitutions of Oxford, 1322.

It remains to be considered whether the use of these two lighted candles can be justified as a question of 'ornaments,' according to the definition of that term already referred to. It was in this sense that the argument for the Respondent appeared to prefer to regard them; and the learned Judge of the Arches Court also, although, at the earlier part of the judgment, he had stated that the matters complained of before him must be considered as 'ceremonies,' appears ultimately to have applied to the use of lighted candles the Law, or Rubric, as to ornaments.

Lighted candles viewed as ornaments.

The Rubric, or note, as to ornaments, in the commencement of the Prayer Book, is in these words:—

'And here is to be noted that such ornaments of the Church, and of the Ministers thereof, at all times of their ministration, shall be retained, and be in use, as were in this Church of *England*, by the authority of Parliament, in the second year of the reign of King *Edward* VI.'

The construction of this Rubric was very fully considered by this Committee in the case of *Westerton* v. *Liddell*, already referred to; and the propositions which their Lordships understand to have been established by the judgment in that case may be thus stated:—

Construction of 'Ornaments' Rubric.

First. The words 'authority of Parliament,' in the Rubric, refer to and mean the Act of Parliament 2 and 3 Edw. VI., cap. 1, giving Parliamentary effect to the

1868.

MARTIN v. MACKONOCHIE.

Judgment.

First Prayer Book of *Edward* VI., and do not refer to, or mean Canons or Royal Injunctions having the authority of Parliament, made at an earlier period. (*Ante*, p. 54.)

Second. The term 'ornaments' in the Rubric means those articles, the use of which, in the services and ministrations of the Church, is prescribed by that Prayer Book. (*Ante*, p. 51.)

Third. The term 'ornaments' is confined to these articles. (*Ibid.*)

Fourth. Though there may be articles not expressly mentioned in the Rubric the use of which would not be restrained, they must be articles which are consistent with, and subsidiary to, the services; as an organ for the singing, a credence Table from which to take the sacramental bread and wine, cushions, hassocks, &c. (*Ante*, p. 74.)

In these conclusions, and in this construction of the Rubric, their Lordships entirely concur, and they go far, in their Lordships' opinion, to decide this part of the case.

Lighted candles are not 'ornaments.'

The lighted candles are clearly not 'ornaments' within the words of the Rubric, for they are not prescribed by the authority of Parliament therein mentioned—namely, the First Prayer Book—nor is the injunction of 1547 the authority of Parliament within the meaning of the Rubric. They are not subsidiary to the service, for they do not aid or facilitate, much less are they necessary to the service; nor can a separate and independent ornament previously in use be said to be consistent with a Rubric, which is silent as to it, and which, by necessary implication, abolishes what it does not retain.

It was strongly pressed by the Respondent's Counsel that the use of lighted candles, up to the time of the issue of the First Prayer Book, was clearly legal; that the lighted candles were in use in the Church in the second year of *Edward* VI., and that there was nothing in the Prayer Book of that year making it unlawful to continue them. All this may be conceded, but it is in reality beside the question. The Rubric of our Prayer Book might have said, those ornaments shall be retained which were lawful, or which were in use in the second year of *Edward* VI.,

and the argument as to actual use at the time, and as to the weight of the injunction of 1547, might in that case have been material. But the Rubric, speaking in 1661, more than 100 years subsequently, has, for reasons which is not the province of a judicial tribunal to criticise, defined the class of ornaments to be retained by a reference, not to what was in use *de facto*, or to what was lawful in 1549, but to what was in the Church by authority of Parliament in that year; and in the Parliamentary authority, which this Committee has held, and which their Lordships hold, to be indicated by these words, the ornaments in question are not found to be included.

Their Lordships have not referred to the usage as to lights during the last 300 years; but they are of opinion that the very general disuse of lights after the Reformation (whatever exceptional cases to the contrary might be produced), contrasted with their normal and prescribed use previously, affords a very strong contemporaneous and continuous exposition of the Law upon the subject.

Result as to lights.

Their Lordships will, therefore, humbly advise her Majesty that the charge as to lights also has been sustained, and that the Respondent should be admonished for the future to abstain from the use of them, as pleaded in these Articles.

Costs.

All these charges against the Respondent having been thus established, their Lordships see no reason why the usual consequence as to costs should not follow; and they will advise her Majesty that the Respondent should pay to the Appellant the costs in the Court below, and of this Appeal.

Order.

By an Order of her Majesty in Council made thereon it was ordered 'that the decree of the Court below ought to be amended to the extent hereinafter mentioned, the principal cause retained, and therein that, in addition to the matters in which the said *Alexander Heriot Mackonochie* was in the decree appealed from pronounced to have offended, and from which he was thereby monished to abstain for the future, he, the said *Alexander Heriot Mackonochie*, ought to be pronounced to have offended against the

1868.

MARTIN v. MACKONOCHIE. Judgment.

Statutes, Laws, Constitutions, and Canons of the Church of *England* by having within the said Church of the new parish of *St. Alban's, Holborn*, knelt, or prostrated himself, before the Consecrated Elements during the Prayer of Consecration, and also by having within the said Church used lighted candles on the Communion Table during the celebration of the Holy Communion, at times when such lighted candles were not wanted for the purpose of giving light; and that the said *Alexander Heriot Mackonochie* ought to be admonished to abstain for the future from kneeling, or prostrating himself, before the Consecrated Elements during the Prayer of Consecration, and also from using in the said Church lighted candles on the Communion Table during the celebration of the Holy Communion, at times when such lighted candles were not wanted for the purpose of giving light; and, further, that he, the said *Alexander Heriot Mackonochie*, ought to be condemned in the costs incurred on behalf of the said *John Martin*, as well in the Court below as in the Appeal.

[*For notes on this Case, see Appendix, Notes E and F.*]

JOHN MARTIN . . . . . APPELLANT;

AND

THE REV. ALEXANDER H. MACKONOCHIE, CLERK . . . . . } RESPONDENT.*

In a Cause and Appeal from the Arches Court of Canterbury.

Motion to enforce obedience to a Monition to carry into effect an Order in Council (*ante*, p. 129) prohibiting the Respondent from elevating the Cup and Paten during the administration of the Holy Communion, and from kneeling or prostrating himself before the Consecrated Elements, and from using lighted candles on the Communion Table, during the celebration of the Holy Communion, when such lighted candles were not wanted for the purpose of giving light.

It appeared that the elevation of the Cup and Paten, for which the Respondent had been articled in the Court below, was an elevation above his head, which was the only mode of elevation pleaded in the Article, after it had been reformed, and was, therefore, that prohibited by the sentence of the Court, and that the Respondent had substituted for such, an elevation only to the level of his head: *Held* by the Court, that, though disapproving and discountenancing any elevation of the Elements whatever, the illegality of the elevation since practised by the Respondent not being raised by the pleadings, he had technically complied with the terms of the sentence, and could not be held to have disobeyed the Monition in that respect.

That, with regard to kneeling, it was proved that

* *Before*: The Lord Chancellor (Hatherley); the Archbishop of York (Dr. Thomson); Lord Chelmsford; Sir James William Colvile; and Sir Joseph Napier, Bart.

the Respondent did prostrate, and bow his knee at the times alleged, in such a manner as to be unable himself to say whether he touched the ground with his knee, or to make it possible for anyone to see whether he was kneeling or not: *Held*, that such prostration was literally kneeling, and alike contrary to the Rubric and to the letter and spirit of the Monition.

That, respecting the lighted candles, inasmuch as it appeared that the candles on the Communion Table, though lighted and burning during the whole service before the celebration of the Holy Communion, and until the commencement thereof, were then extinguished, their Lordships were unable to hold that there had not been a literal compliance with the strict terms of the Monition; though the charge established by the evidence was for using candles on the Communion Table at times when they were not wanted for the purpose of giving light.

Under the circumstances, their Lordships expressed their opinion that the Monition had been disobeyed with reference to the kneeling during the Prayer of Consecration, and monished the Respondent to refrain therefrom for the future; and, to mark their disapprobation of his course of proceeding, ordered him to pay the costs of the motion.

The principles laid down in the case of *Martin* v. *Mackonochie* referred to and confirmed.

Dec. 2 & 4, 1869.

MARTIN v. MACKONOCHIE. PART II. Statement.

THIS was an application to the Judicial Committee for an order to enforce compliance with a Monition issued to carry into effect the order made by her Majesty in Council in the above cause.

It appeared that, notwithstanding the Order and Monition, the Respondent refused to comply therewith, and to a great extent continued the practices he was monished to abstain from; that he continued to elevate the Cup and Paten, to kneel or prostrate himself before the Consecrated Elements, and to use lighted candles on the Communion Table, when they were not wanted for the purpose of giving light. A Petition was, therefore, presented, praying their Lordships to enforce the Monition, and that the Respondent might be condemned in costs.

Statement.

Affidavits in support of motion.

The Petition was supported by affidavits, in which the arrangements of the Respondent's church, and his manner of proceeding in conducting the services, was described and deposed to, as witnessed on two several occasions, when the Deponents attended Divine Service there, as follows:—

'That, during the whole of the Morning Prayer and Communion Service, there were seven lamps suspended from the ceiling of the church, over the chancel, each lamp containing a coloured light, which lights were burning during the whole of the Morning Prayer and Communion Service; that at the commencement of the Morning Prayer there were eight lighted candles upon a shelf, about six inches above the level of the Communion Table, and which appeared to form part thereof, two of such candles being in candlesticks, and six in two candelabra, holding three candles each, such candlesticks and candelabra standing upon the said shelf; that such eight candles were extinguished immediately before the commencement of the Communion Service, up to which time they were kept continuously burning; that neither such lamps nor such candles were required for the purpose of giving light.

'That when the Respondent, in celebrating the Communion Service, came to that part of the Prayer of Consecration at which the Rubric directs the Priest to take the Paten into his hands, he paused in reading the said Prayer, and that during such pause, and before taking the Paten into his hands, he bowed himself down to the Communion Table, so that his forehead nearly touched the same; he then stood upright, and immediately afterwards knelt down upon the steps leading to the Communion Table; that, after kneeling for a few seconds, he rose, and again stood up, and took the Paten into his hands, and raised it level with his head; that he then replaced the Paten upon the Communion Table; that he then again bowed down to the Communion Table, so that his forehead nearly touched the same; he then again stood upright, and immediately afterwards knelt down upon the steps leading to the Communion Table; that after kneeling for a few seconds he again arose, stood up, and proceeded with said Prayer of Consecra-

1869.

MARTIN v. MACKONOCHIE.

PART II. Statement.

tion, until he came to that part at which the Rubric directs the Priest to take the Cup into his hands; he then again paused in reading the said Prayer; that during such pause, and before taking the Cup into his hands, he bowed himself down to the Communion Table, so that his forehead nearly touched the same; he then stood upright, and immediately afterwards knelt down upon the steps leading to the Communion Table; that, after kneeling for a few seconds, he again rose and stood up, and took the Cup into his hands and raised it level with his head; he then replaced the Cup upon the Communion Table; he then again bowed down to the Communion Table, so that his forehead nearly touched the same; he then rose and stood upright, and immediately afterwards knelt down upon the steps leading to the Communion Table; that after kneeling for a few seconds he again rose, stood up, and proceeded with the Prayer of Consecration; that in handing the Cup to the assistant Priest he knelt down facing the Priest, and bowed himself down very low, the assistant Priest at the same time holding up the Cup as high as he could reach; and the same was repeated when the assistant Priest returned the Cup to the celebrant, after the communicants had partaken; and that such pauses, bowings, and kneeling on the part of the Respondent were designed and intentional, and were not accidental or caused by any infirmity.'

Affidavits of Respondent.

The Respondent, who appeared, as he asserted, under protest, filed two affidavits made by himself, and one by Mr. *Walker*, one of his curates. In his own affidavit he stated 'That the manner of elevation of the Cup and Paten at the Church of St. *Alban's*, during the Consecration Prayer and the Service for the Administration of the Holy Communion, adopted and sanctioned by him, had invariably been one and the same since he discontinued the elevation above the head, and was the same as that of which Sir *Robert Phillimore*, in his judgment in this case in the Court of Arches, said, "His present practice is not complained of;"' and he added, 'I did not on either of the days or times mentioned in the affidavits on which this motion is founded, nor have I ever since the service of the said Monition on

me, prostrated myself, or knelt on steps leading to the Communion Table, or elsewhere, when celebrating the Holy Communion, during any part of the Consecration Prayer. I admit,' he continued, 'that it is my practice during the Prayer of Consecration, when celebrating the Holy Communion, and whilst standing before the Holy Table, reverently to bend one knee at certain parts of the said Prayer, and occasionally in so doing my knee momentarily touches the ground, but such touching of the ground is no part of the act of reverence intended by me. Whether my knee may have thus momentarily touched the ground on either of the days mentioned in the affidavits on which I am stated to be the celebrating Priest, I am, of course, unable to say.' The further affidavit put in by the Respondent stated that, ever since the Monition of the Court in the above cause was served upon him, he had endeavoured to obey it; and had never intentionally or advisedly in any respect disobeyed it, or sanctioned any practices contrary to the provisions of that Monition.

The affidavit of Mr. *Walker* deposed to the same effect as to the manner of elevating the Paten and Cup, and expressly stated that 'the Respondent did not prostrate himself or kneel upon the steps leading to the Communion Table, or elsewhere, at any time during the Prayer of Consecration,' on the days mentioned in the affidavits of the Appellant's witnesses, and, to the best of his (the Deponent's) belief, he (the Respondent) did not touch the ground with either of his knees at all during that time on the occasions on which the Respondent was accused of doing so, adding that, 'having regard to the positions of the celebrating and assisting Priests during the Consecration Prayer, as well as to the length and nature of their dress, I do not believe that it is possible for any person in the body of the Church to say whether the Respondent did kneel or not.'

The motion came on for final hearing on these affidavits. Hearing.

Mr. *A. J. Stephens*, Q.C., Mr. *Archibald*, and Mr. *Droop* for the Appellant;

1869.

MARTIN v. MACKONOCHIE.

PART II. Judgment.

The *Respondent* in person.

The LORD CHANCELLOR (Hatherley) :—

In this case a motion has been made calling upon their Lordships to take proceedings, in order to enforce the Monition, which has been served upon the reverend Respondent, with regard to the execution of a sentence pronounced in the first instance by the Court of Arches. This sentence was in some degree extended and modified by the judgment which this Committee was called on to pronounce, or rather by the decision which they were called upon, after argument, to recommend as fit to be made by an Order of her Majesty in Council.

The Order provided for several matters; as to three of which only it is now alleged that there has been a breach by the Respondent of the Monition issued in pursuance of the Order. Those three matters are: First, that he continues to elevate the Cup and Paten during the administration of the Holy Communion; secondly, that he continues to kneel or prostrate himself before the Consecrated Elements during the Prayer of Consecration; and, thirdly, that he continues to use lighted candles on the Communion Table at times when such lighted candles are not wanted for the purpose of giving light.

The Monition.

In order to see how far that which is complained of has been a breach of the Monition, we must of course, in the first instance, look to the Monition itself. The Monition having recited that the Respondent was pronounced to have offended against the Statutes, Laws, Constitutions, and Canons of the Church of *England* by having knelt or prostrated himself before the Consecrated Elements during the Prayer of Consecration, and also by having, within the said Church, elevated the Cup and Paten during the Holy Communion, and also by having used lighted candles on the Communion Table, during the celebration of the Holy Communion, at times when such lighted candles were not wanted for the purpose of light, proceeds to direct him to abstain for the future from the elevation of the Cup and Paten during the administration of the Holy Commu-

nion, and from kneeling or prostrating himself before the Elements during the Prayer of Consecration, and also from using in the church lighted candles on the Communion Table, during the celebration of the Holy Communion, at times when such candles are not wanted for the purpose of giving light.

Evidence as to lighted candles.

The evidence, which is before their Lordships, is addressed to these three different heads. We will deal with them in a different order from that in which they appear in the prayer of the application, and take the case of lighted candles on the Communion Table, at times when such candles are not wanted for the purpose of giving light, in the first instance, because, with reference to that part of the case, it appears to their Lordships that the affidavits do not make out the offence charged. In the first place, it appears that the offence charged is not in strict conformity with the Monition, because the Monition is itself confined to using those candles on the Communion Table at times when they were not wanted for the purpose of giving light, leaving out the words 'during the time of the Holy Communion.'

Of course it is not competent for their Lordships to proceed beyond the actual Monition which has been served upon the Respondent. It is that which he is said to have disobeyed, and it is to the disobedience of the Monition only that their Lordships can address themselves.

It is plain upon the affidavits that the candles have not been lighted during the Holy Communion, for the course taken by the Respondent has been this, that the candles are lighted (as he says they always have been, and were at the time of the proceedings herein being taken), and are kept burning up to the period of the Holy Communion, and then immediately before the commencement of the Holy Communion they are extinguished.

Result as to lighted candles.

There is no doubt, therefore, in this case a literal compliance with the terms of the Monition. The candles are not lighted during the period of the Holy Communion. They are lighted, indeed, when there is no necessity for their being lighted for the purpose of giving light, but they are extinguished before the Holy Communion;

1869.

MARTIN v. MACKONOCHIE.

PART II.

Judgment.

therefore, the compliance with the terms of the Monition has been literal and complete, and not, in that sense, evasive, for the Respondent was limited to a particular time in reference to the candles; and whatever one may feel as to the course of the reverend Respondent, looking to the spirit of the Monition, of course the Monition could not go beyond the matters that were charged; the offence charged was one which he has abstained from; and in this respect, therefore, their Lordships are clear that the prayer of this motion cannot be complied with.

Elevation of Cup and Paten.

The next charge is, that he continues to elevate the Cup and Paten during the administration of the Holy Communion; and, with reference to this matter, their Lordships feel that the case is placed in a position that is eminently unsatisfactory. On the former occasion the sentence of the Judge in the Court below was approved of with reference to this particular subject; therefore that sentence is the sentence to which recourse must be had by their Lordships when interpreting the Monition, which cannot, of course, proceed further than the sentence itself. The sentence of the Court below was thus worded:—The Respondent was ordered 'to abstain for the future from the elevation of the Cup and Paten during the administration of the Holy Communion, and also from the use of incense, and from the mixing of water with the wine during the administration of the Holy Communion, as pleaded in the Articles.'

The monition must be interpreted by the article of charge.

Their Lordships think that the words 'as pleaded in the Articles' must be applied to those several offences which are charged in the passage just quoted—namely, the elevation of the Cup and Paten—also the use of incense, and the mixing of water with wine; and their Lordships are thrown back, therefore, to the Articles to see what it was that was there pleaded, and they find this state of circumstances:—Originally the third Article pleaded that there was an elevation of the Cup and Paten beyond what was necessary for the purpose of complying with the terms of the Rubric, which directs that at a particular part of the Prayer of Consecration, when the Sacred Elements are dealt with, the Paten shall be taken into the hands, and at

another part that the Cup shall be taken into the hand, or hands (for there is some little variation in the two parts of the Rubric itself) of the officiating Minister. That would have been, as it appears to all their Lordships, a charge which would have raised a distinct and definite issue, whether the elevation of the Paten or the elevation of the Cup were, or were not, a *bonâ fide* raising it, so far only as is necessary for anything to be raised—that is, to be taken from the Table—or whether or not there was some ulterior purpose—that is to say, an act of elevation wholly distinct from, and going beyond, what was necessary for the mere purpose of taking the Paten and Cup into the hands of the officiating Minister.

As reformed in Court below.

But the words 'and otherwise' were also inserted in the same third Article in a part which rendered it very difficult to attach any definite sense to them. Those words were so vague, that the learned Judge before whom the case first came (Dr. *Lushington*) conceived that he could not admit the Article in that form, and that the words introduced such a degree of vagueness as to render it improper to call on the Respondent to answer the charge in its then shape; and, therefore, the learned Judge said that the Article must be reformed.

In the reforming of that Article, those who reformed it appear to have gone beyond anything that was required by the decision of the learned Judge in the course of the argument upon the admission of the Articles. They not merely struck out these words 'and otherwise,' but they also materially varied the language by describing definitely in the reformed Article the act which had been performed—namely, that it was an elevation of the Elements 'above the head of the Respondent.'

Which deals only with one particular mode of elevation.

The Article then became confined to that particular mode of elevation, instead of being a charge of elevation beyond what was necessary for the proper compliance with the Rubric; and, therefore, when the sentence of the Judge, which directs that he shall abstain for the future from the elevation 'as pleaded in the Articles,' is considered, it appears to their Lordships that they are necessa-

1869.

MARTIN v. MACKONOCHIE.

PART II. Judgment.

rily confined to that particular charge which is there contained, and that particular mode of elevation which is there complained of.

No elevation as distinguished from mere removal is sanctioned.

We have been thus particular in going through all the circumstances of this case, which is left, as it appears to their Lordships, in a very unsatisfactory position, because it is most desirable, and their Lordships are all of opinion, that it should be distinctly understood that they give no sanction whatever to a notion that any elevation whatever of the Elements, as distinguished from the mere act of removing them from the Table, and taking them into the hand of the Minister, is sanctioned by Law. It is not necessary for their Lordships to say more (but most undoubtedly less we cannot say) than that we feel nothing has taken place in the course of this cause, that can possibly justify a conclusion, that any elevation whatever, as distinguished from the raising from the Table, is proper or sanctioned. All that their Lordships can say on the present occasion is, that the point has never yet been in these proceedings raised, that a particular and definite mode of elevation only has been averred and complained of, and with that particular and definite mode of elevation we have nothing further to do, because it is conceded on all sides that such particular mode has been departed from.

It is not for us to say how far the letter to which the Respondent himself has referred, and in a part of which he says that the simple compliance with the Rubric—namely, taking the Cup and Paten into his hands—would be sufficient for the purpose of satisfying a certain portion of his parishioners as regards the elevation of the elements, may or may not have misled the Judges who had this case before them.

They held that the matter complained of, having been discontinued, had in effect not been complained of—that is, by the Articles—and we have felt it to be right and proper to say thus much; nothing, therefore, which we are now determining can be pleaded hereafter as a justification for any mode of elevation, which is to be distinguished from the

1869.

MARTIN v. MACKONOCHIE.

PART II.

Judgment.

Result.

mere act of removing the Elements from the Table, and taking them into the hands of the Minister.

Inasmuch, then, as the reverend Respondent has said upon oath, and it is not now contravened, that his course of procedure has only been that which he says he adopted at the time of the first hearing of the matter, owing to the complaint made of the higher elevation pleaded in the Articles, their Lordships think they cannot, in that state of circumstances, say that he has thereby committed a breach of the Monition which has been served upon him.

The third matter which has been complained of is as as follows; and as to this matter, their Lordships think the case is open to very different considerations:—

Kneeling or prostration.

The Respondent was admonished 'not to kneel or prostrate himself before the Consecrated Elements during the Prayer of Consecration;' and, without going through the affidavits, the exact state of circumstances may be taken to be as they appear upon the affidavits made by the Respondent himself, and by Mr. *Walker*, the gentleman who was present on the several occasions referred to in the motion. The affidavits in support of the motion stated distinctly acts of prostration and of kneeling during the period of the Prayer of Consecration. Into the details of those affidavits it is unnecessary to enter, because in the affidavit of the Respondent there is this, which seems to set the case in a very fair light so far as the facts are concerned. The Respondent says, 'I did not on either of the days or times mentioned in the affidavits on which this motion is founded, nor have I ever since the service of the said Monition on me, prostrated myself or knelt on steps leading to the Communion Table, or elsewhere, when celebrating the Holy Communion during any part of the Consecration Prayer. I admit that it is my practice during the Prayer of Consecration, when celebrating the Holy Communion' (the time, therefore, is exactly fixed to which the Monition would apply), 'and whilst standing before the Holy Table, reverently to bend one knee at certain parts of the said Prayer, and occasionally in so doing my knee momentarily

1869.

MARTIN v. MACKONOCHIE. PART II. Judgment.

touches the ground, but such touching of the ground is no part of the act of reverence intended by me. Whether my knee may have thus momentarily touched the ground on either of the days mentioned in the said affidavits, on which I am stated to be the celebrating Priest, I am, of course, unable to say.' Mr. *Walker* is a little bolder upon that point, because he says this (he was present on these days) :—'That the Respondent did not prostrate himself, or kneel upon the steps leading to the Communion Table, or elsewhere, at any time during the Prayer of Consecration on July 18 and November 14, 1869, as mentioned in the said affidavits; and, to the best of my belief, he did not touch the ground with either of his knees at all during that time on the occasions on which the Respondent is accused of doing so.' Then he further says this :—'And, having regard to the positions of the celebrating and assisting Priests during the Consecration Prayer, as well as to the length and nature of their dress, I do not believe that it is possible for any person in the body of the church to say whether the Respondent did kneel or not.

Therefore, the case as stated is this; Mr. *Mackonochie* being enjoined against kneeling during this Prayer, admits a gesture which he contends is not kneeling, but he admits a bowing of his knee, a bowing of it to an extent which occasions it at times momentarily to touch the ground, a bowing of it to an extent which renders it impossible (according to Mr. *Walker's* affidavit) for anybody to see whether he is or is not kneeling; this is the distinct statement in the affidavit—viz., that nobody could see whether he is kneeling or not.

How far the Monition complied with.

First of all their Lordships would consider the literal question which is before them, whether there has been even a literal compliance with the Monition in this act of Mr. *Mackonochie*. Their Lordships are all of opinion that there has not been even a literal compliance; that Mr. *Mackonochie* has knelt; and that bowing the knee in the manner which he has described is kneeling; and that it is not necessary that a person should touch the ground in order to perform such an act of reverence as will constitute kneeling. Of

course there may be such a bowing of the knee as would not amount to kneeling in the sense of the Monition, but Mr. *Mackonochie* very properly says that he takes no advantage of any suggestion of that sort. There may be an accidental bowing of the knee, arising from fatigue or otherwise; but here is a knee bent for the purpose of reverence, and in such a manner that those who behold cannot tell whether or not what Mr. *Mackonochie* and Mr. *Walker* call kneeling—that is, touching the ground with the knee—has been arrived at, and indeed Mr. *Mackonochie* says that at certain times his knee has momentarily touched the ground. This seems to their Lordships to be literally kneeling.

Tampering with the orders of the Court.

But the case must be put much higher than that, because neither this Tribunal, nor any Tribunal will suffer its orders to be tampered with by mere evasion; and a mere evasion it would be to allow a person when ordered not to kneel (the whole gist and purport of the order, as I shall presently show, being the kneeling by way of reverence) to say, 'I did all that I could do towards so kneeling; I bowed my knee; I nearly touched the ground with it—I did not quite touch the ground, but I did it in such a manner that all my congregation, all who were attending and seeing that which I did, could not possibly tell whether I were kneeling in that sense or not.' It would be intolerable to allow any order to be trifled with in such a manner as must be implied if their Lordships were to give place for a moment to any such argument on the part of Mr. *Mackonochie*, as that this was a compliance with the order.

Now, with reference to this particular matter of kneeling, it is one, undoubtedly, of very great importance as regards the judgment which has been pronounced, and the occasion of that judgment. We cannot do better, with reference to this part of the subject, than call attention to the purport and intent of the Book of Common Prayer, when prescribing what is to be done, and in omitting to prescribe that which it does not intend to be done. For that purpose I will refer to the judgment which was pronounced by Lord *Cairns* as the judgment of the Judicial Committee on the

1869.

MARTIN v. MACKONOCHIE.

PART II. Judgment.

former occasion. His Lordship thus expresses himself in that judgment (*ante*, p. 119) :—'Their Lordships are of opinion that it is not open to a Minister of the Church, or even to their Lordships in advising her Majesty, as the highest Ecclesiastical Tribunal of Appeal, to draw a distinction in acts which are a departure from, or violation of, the Rubric, between those which are important and those which appear to be trivial. The object of a *Statute of Uniformity* is, as its preamble expresses, to produce "an universal agreement in the public worship of Almighty God"—an object which would be wholly frustrated if each Minister, on his own view of the relative importance of the details of the service, were to be at liberty to omit, or add to, or alter, any of those details. The rule upon this subject has been already laid down in *Westerton* v. *Liddell*, and their Lordships are disposed entirely to adhere to it:—"In the performance of services, rites, and ceremonies ordered by the Prayer Book the directions contained in it must be strictly observed; no omission and no addition can be permitted"' (*ante*, p. 74). And then upon this very subject matter his Lordship further proceeds to say, 'There would indeed be no difficulty in showing that the posture of the celebrating Minister during all the parts of the Communion Service was, and that for obvious reasons, deemed to be of no small importance in the changes introduced into the Prayer Book at and after the Reformation. The various stages of the Service are, as has already been shown, fenced and guarded by directions of the most exact kind as to standing and kneeling—the former attitude being prescribed even for prayers during which a direction to kneel might have been expected. And it is not immaterial to observe, that whereas in the first Prayer Book of King *Edward* VI. there was contained at the end a Rubric in these words:—"As touching kneeling, crossing, holding up of hands, knocking upon the breast, and other gestures, they may be used or left, as every man's devotion serveth, without blame"—this Rubric was in the second Prayer Book of *Edward* VI., and in all the subsequent Prayer Books omitted.' (*Ante*, p. 120.)

We may further add an observation as to the extreme care which is taken in the Prayer Book to guard all persons who might feel a scruple with reference to kneeling at the reception of the Holy Communion, from any inference that might thereby be raised in their minds of a nature contrary to that which was intended by the Prayer Book itself to be expressed—namely, any intention of adoration of the Holy Elements. This is most particularly and carefully guarded against, and the reason for such kneeling is explained, and said to be 'for a signification of our humble and grateful acknowledgment of the benefits of Christ therein given to all worthy receivers, and for the avoiding of such profanation and disorder in the Holy Communion as might otherwise ensue.' Then it is explained:—'Yet, lest the same kneeling should by any person, either out of ignorance and infirmity or out of malice and obstinacy, be misconstrued and depraved, it is hereby declared that thereby no adoration is intended, or ought to be done, either unto the Sacramental bread or wine there bodily received or unto any corporal presence of Christ's natural flesh and blood. For the Sacramental bread and wine remain still in their very natural substances, and therefore may not be adored; for that were idolatry, to be abhorred by all faithful Christians.'*

Kneeling at reception is not adoration.

And, again, carefully does our Church provide in her Twenty-eighth Article against any such adoration as we have spoken of by this declaration:—'The Sacrament of the Lord's Supper was not by Christ's ordinance reserved, carried about, lifted up, or worshipped.'

Now, that being so, and it being of the utmost importance that, for the purposes of common prayer, such union should be preserved as is essential to the happiness and comfort of all who are joining in this most holy ordinance; what can be a greater offence than the offence of, either by addition or omission, occasioning trouble or confusion in the minds of those who are invited to join in common prayer, and in one common act of reverence?

* Declaration at the end of the Service of the Holy Communion.

1869.

MARTIN v. MACKONOCHIE.

PART II. Judgment.

Acts of reverence where necessary are enjoined; and the use of additional acts of reverence, where they are not enjoined, is, according to the judgment which has been pronounced in this very matter, a thing prohibited.

If, therefore, the reverend Respondent, in performing his own special act of reverence, does it in such a manner that no one can tell whether he is not doing the very thing which he is prohibited from doing, and has performed that special act of reverence at a time when there is no direction in the Book of Common Prayer for that performance, he certainly does that which militates, in every possible view of the case, both in letter and spirit, against the Monition which he has received, and the reasoning which occasioned that Monition to be issued.

Whether or not Mr. *Mackonochie* can reconcile it with his view of what is right, that a judgment of this kind should be so narrowly scrutinised, that every possible limit should be placed upon it, and that notwithstanding the reasons which are assigned for it—namely, the desire of promoting uniformity in common worship—it should be, as far as possible, evaded, it is not for their Lordships to say. There may be some who feel great grief and sorrow at any act which may appear to be at variance with the common charity and love that should induce us at all times when assembled for worship, and most especially this highest and holiest act of worship, to be as far as possible of one mind, so that then at least our unity be not disturbed.

More required than an evasive compliance with the Law.

But what one is justified in saying, as regards the act which is now complained of, as a breach of the Monition, is this—that it is not possible, happily, to reconcile with the administration of our Law in its narrowest sense, any mere evasion of that which the Law sanctions, of that which the Law has ordered, by an authority which binds this reverend gentleman, as it binds every subject of the realm, to strict obedience. That obedience may be rendered grudgingly, if so it must be; it may be rendered in a manner which I am sure the reverend gentleman would not tolerate on the part of any of his flock, if it

were a question of obedience to a higher power; it may be rendered, therefore, strictly within the limits which are exactly prescribed by the Monition; but that Monition may not be evaded. A mere literal compliance is not all that even the Law requires; the compliance must not be literal in a sense which is but evasive.

Narrowness of obedience of Respondent.

I will not, in the name of their Lordships, say more upon what, I confess, presses upon me individually very strongly—the narrowness of obedience shown by the course taken as to keeping the candles lighted until the very moment when they are forbidden, and then extinguishing them, and as to the elevation of the Elements to something which, even on the affidavits themselves, appears to me to be more than necessary for simply taking the Cup and Paten into the hands of the officiating Clergyman, since we have been obliged to hold that these acts were, nevertheless, in literal compliance with the Monition having reference to the Articles.

But here, in this matter of kneeling, their Lordships find that there is, first, not even a literal compliance with the Order; and, secondly, if, upon any strained interpretation of the word 'kneeling' (for strained as it appears to their Lordships it would be), they could arrive at the conclusion that it did not preclude the act of bowing one knee so low that it must at times touch the ground, and in a manner which cannot possibly be distinguished from kneeling by those who witness the act; still, if it was a representation of a forbidden act, as nearly as the party charged dared to represent it, and in such a guise as to convey to all at a distance the impression that the act of kneeling was really performed, that would be a species of evasion of the Order, which a Court of Justice would find it right and due to the maintenance of its own force and vigour to visit as being itself a breach of the Order which had been made.

For this reason it has seemed to their Lordships (and it is the opinion of us all) that there has been a clear breach of this Monition.

Enforcement of orders.

Their Lordships next take into consideration what is

1869.

MARTIN v. MACKONOCHIE.

PART II. Judgment.

proper and right to be done. They did not hear Mr. *Stephens* upon the question as to whether or not this Tribunal has the means of enforcing its orders. Happily it has been supplied (and I use the word 'happily,' because it would be in vain to establish a Tribunal which has no power to enforce its orders) with abundant means for that purpose by the Statutes which have been passed in that behalf; but into the examination of these means, and the different modes which might be adopted for that purpose, we are not, for the reason I am presently going to mention, about to enter. In declining to take any more severe step than that of compelling Mr. *Mackonochie* to pay the costs of this application, their Lordships have had to consider the affidavit which was last made by him, and to which they have been desirous to give the most favourable construction and allowance; and in that affidavit Mr. *Mackonochie* very properly says that he never intentionally or advisedly, in any respect, disobeyed the Monition, or sanctioned any practice contrary to its provisions. I confess I think, as I have already intimated, that Mr. *Mackonochie* takes an exceedingly narrow view of that which the word 'obedience' ordinarily implies, when he says that he has endeavoured to obey this Order; but he does say that which in a sense, for the purpose of clearing his contempt, he may have a right to claim the benefit of—that he never intentionally or advisedly, in any respect, disobeyed the Monition.

Costs.

He now, we hope, will learn that mere literal compliance in a merely evasive manner will not suffice. Literal compliance with regard to the actual limits of the Order is, of course, all that he is held to in Law; for an obedience to the spirit of the Order we can only trust to his own feelings and to his own conscience. And when he thus tells us that it has not been, and is not, his desire wilfully to disobey the Law, or to disregard its Monition, their Lordships think that they are bound, on this first occasion of the matter being brought before them of any non-compliance with the Order, to allow Mr. *Mackonochie* the benefit of that affidavit; and they do not think it necessary on the present occasion to do more, after expressing their opinion

judicially that the Monition has been disobeyed with reference to kneeling during the Prayer of Consecration, than to mark their disapprobation of such a course of proceeding by directing that he shall pay the costs of the present application.

Their Lordships make no further order.

The following Monition was drawn up and issued in pursuance of their Lordships' judgment:—

Monition.

'The Lords of the Committee, having heard *Alexander Heriot Mackonochie*, the Respondent, in person, and Counsel on behalf of the Appellant, pronounced that he, the said *Alexander Heriot Mackonochie*, had not obeyed the Monition which had been served upon him, and whereby he was, amongst other things, commanded to abstain for the future from kneeling before the Consecrated Elements during the Prayer of Consecration; monished him to abstain therefrom for the future; and condemned him in the costs of these proceedings.'

JOHN MARTIN . . . . . APPELLANT;

AND

THE REVEREND ALEXANDER H. MACKONOCHIE . . . . . } RESPONDENT.*

In a Cause and Appeal from the Arches Court of Canterbury.

Motion against the Respondent for disobedience to a Monition founded upon an Order in Council, which ordered him (amongst other things) to abstain for the future 'from the elevation of the Cup and Paten during the administration of the Holy Communion, and from kneeling and prostrating himself before the Consecrated Elements during the Prayer of Consecration;' in that he knowingly and habitually sanctioned the elevation of the Cup and Paten above the head of the officiating Clergyman in the Prayer of Consecration, and knowingly and habitually sanctioned kneeling and prostration during the Prayer of Consecration. It appeared that the ordinary course pursued was for the officiating Clergyman, on reaching the words of institution in the Prayer of Consecration, to drop his voice so as to be nearly inaudible; that he then elevated (not the Paten) but a large wafer bread, and, replacing it upon the Communion Table, bowed his head down towards the Table, and remained some seconds in that position; that he then elevated the Cup so that the rim was some inches above his head, and, replacing it on the Table, bowed as before, after which the administration of the Elements commenced: *Held*, that such elevation of the wafer was equivalent to an elevation of the Paten, the elevation which is unlawful being that of the Consecrated Bread itself, and not the Paten

* *Present*: The Lord Chancellor (Hatherley); the Archbishop of York (Dr. Thomson); and Lord Chelmsford.

in which it is placed; that the bowing of the head in the manner described at the Prayer of Consecration, though without bending the knee, was a prostration before the Consecrated Elements, whereof the sanctioning was a disobedience of the Monition, and the Order in Council for such disobedience of the Monition; and the Respondent ordered to be suspended from the discharge of all clerical duties and offices and the execution thereof for the space of three calendar months.

Nov. 16, 18, 25, 1870.

MARTIN v. MACKONOCHIE. PART III. Statement.

THIS was a motion to enforce obedience to a Monition which had been served on the Respondent, admonishing him (among other things) 'to abstain from the elevation of the Cup and Paten during the administration of the Holy Communion, and from kneeling and prostrating himself before the Consecrated Elements during the Prayer of Consecration.'

Affidavits were filed to the effect that the Respondent had not complied with the Monition, and a motion was made to the Judicial Committee on December 2, 1869 (*ante*, p. 131), to enforce the Monition. On December 4 their Lordships pronounced, *inter alia*, 'that the Respondent had not obeyed the Monition which had been served upon him, and whereby he was (amongst other things) commanded to abstain for the future from kneeling before the Consecrated Elements during the Prayer of Consecration; monished him to abstain therefrom for the future; and condemned him in the costs of the proceedings.'

Notwithstanding these proceedings, the Respondent continued to disobey the Monition by knowingly and habitually sanctioning the elevation of the Paten and Cup above the head of the officiating Clergyman in the Prayer of Consecration during the administration of the Holy Communion, such elevation being then practised by his Curates and other Clerks in Holy Orders, when officiating and saying such Prayer in his stead and place, and in his presence, in the church of which he was Incumbent; and he also knowingly and habitually sanctioned kneeling or prostration before the Consecrated Elements during such Prayer by his Curates and other Clerks

1870.

MARTIN v. MACKONOCHIE.

PART III. Statement.

in Holy Orders, when so officiating and saying such Prayer.

These violations of the Monition were deposed to by several witnesses, who, in their affidavits, described the course usually followed in the Respondent's church, which appeared to be for the principal officiating Clergyman, when he came to that part of the Office for the Administration of the Holy Communion where the Consecration Prayer is to be read, to lower his voice so as to become indistinct, and only audible as a kind of murmur by the greater part of the congregation; and that while he was thus indistinctly speaking and making a brief and momentary pause, a bell began to toll, and the following actions and circumstances took place:—The officiating Clergyman paused, and then bowed down over the Holy Table, and then knelt down with his hands resting thereon, and on rising elevated either the Paten or what appeared to be, and was, a large wafer-bread, about three inches above the level of his head; and, on replacing it on the Holy Table, again bowed and knelt down as before; and after a short interval he similarly raised the Chalice, or Cup, so that the rim thereof was about three inches above his head, and immediately after replacing the same on the Holy Table knelt down upon both knees, and bowed his head below the level of the top of the Holy Table, and on rising, after a short pause, proceeded with the administration of the Holy Communion.

In consequence of such practices, notice of an application to enforce the observance of the Monition was served on the Respondent; and a case was lodged in the Council Office containing the particulars of the acts of disobedience to the Monition.

This case, with the affidavits referred to, with notice of the intended motion thereon, was served on the Respondent, who did not appear; but after some delay he filed counter-affidavits, which in no respect contradicted, though they purported to explain, the practices deposed to and alleged against him. The Appellant filed a supplemental case with affidavits in reply to those filed by the Respondent.

Mr. *A. J. Stephens*, Q.C., Mr. *Archibald*, and Mr. *Shaw* in support of the motion to enforce the Monition. They also cross-examined the Respondent as to the alleged practice of elevating the Cup and Paten and prostration before the Consecrated Elements during the Prayer of Consecration, and regarding his allowing and sanctioning other officiating Clergymen to do the same. The substance of such cross-examination is fully stated in the judgment.

Judgment was reserved, and now delivered by

LORD CHELMSFORD :—

Nov. 25, 1870.
Judgment.
Statement of case.

This is an application against the Reverend *Alexander Heriot Mackonochie*, Perpetual Curate of the Parish of *St. Alban's, Holborn*, for disobedience to a Monition founded upon an Order in Council of January 19, 1869, by which he was commanded (amongst other things) to abstain for the future 'from the elevation of the Cup and Paten during the administration of the Holy Communion, and from kneeling and prostrating himself before the Consecrated Elements during the Prayer of Consecration.' A previous application for disobedience to the Monition in these particulars was made against Mr. *Mackonochie*, upon which their Lordships expressed an opinion that the Monition had been disobeyed with reference to kneeling during the Prayer of Consecration, and condemned him in costs. Upon that occasion their Lordships explained the way in which the Article of Charge with respect to the elevation of the Cup and Paten came to be worded as it was. The Article, as it was originally framed, was objected to as vague and general, and was ordered to be reformed. The Article, as reformed, charged Mr. *Mackonochie* with having elevated the Paten and the Cup above his head during the Prayer of Consecration. It was quite unnecessary to charge an elevation of the Paten and the Cup to the extent described in the reformed Article, because the twenty-eighth of the Articles of Religion prohibits all elevation of the Elements, declaring that 'the Sacrament of the Lord's Supper was not by Christ's ordinance reserved, carried about, lifted up, or worshipped.' So the elevation of the

1870.

MARTIN v. MACKONOCHIE.

PART III. Judgment.

Paten and Cup need not have been charged to have taken place during the Prayer of Consecration. It would have been sufficient to have stated it to have occurred during the administration of the Holy Communion. But the charge having been thus precisely framed (however unnecessarily), the specific offence to be proved against Mr. *Mackonochie* was not simply an elevation of the Cup and Paten, but an elevation of them above his head at the particular period of the administration when the Prayer of Consecration was being read. Upon the original hearing before the Dean of the Arches, he pronounced that Mr. *Mackonochie* had offended in the terms of this Article, and monished him to abstain for the future from the elevation of the Cup and Paten during the administration of the Holy Communion as pleaded in the Articles. There was no appeal from this part of the sentence. In the Monition which followed the appeal to this Committee from the rest of the sentence of the learned Judge of the Arches Court, Mr. *Mackonochie* is commanded to abstain for the future from the elevation of the Cup and Paten during the administration of the Holy Communion; but, upon the former application against Mr. *Mackonochie* for disobedience to this Monition, their Lordships were of opinion that the words 'as pleaded in the Articles' must be understood as being in the Monition, and, therefore, that the prohibited elevation was confined to the degree and the time charged in the Article. The unnecessary particularity in the wording of this Article of Charge afforded Mr. *Mackonochie* the opportunity, of which he availed himself, to obey the Monition to the letter, and still to continue to elevate the Cup and Paten during the administration of the Holy Communion, but not above his head, nor during the Prayer of Consecration.

Ruling of the Court of the Arches.

Strict construction of the Monition on former application.

Their Lordships were, therefore, compelled, upon the evidence produced upon the former application against Mr. *Mackonochie*, to come to the conclusion that he had not disobeyed the Monition in this respect, but they took care 'to have it distinctly understood that they gave no sanc-

Judgment on former application as to elevation of Elements and prostration.

tion whatever to a notion that any elevation of the Elements, as distinguished from the mere act of removing them from the Table, and taking them into the hands of the Minister, was sanctioned by Law.' Upon another charge of disobedience to the Monition Mr. *Mackonochie* was not so successful as upon the former occasion, in protecting himself by a supposed literal compliance with its terms. He was commanded not to kneel or prostrate himself before the Consecrated Elements during the Prayer of Consecration. He admitted that it was his practice during the Prayer of Consecration reverently to bend one knee at certain parts of the Prayer, and that occasionally in so doing his knee momentarily touched the ground, but that such touching of the ground was no part of the act of reverence intended by him. And he contended that this genuflection, unless the knee reached the ground, was not kneeling. Their Lordships, however, expressed a clear opinion that bowing the knee in the manner described by Mr. *Mackonochie* was kneeling, and that it was not necessary a person should touch the ground in order to perform such an act of reverence as will constitute kneeling. Their Lordships thought it right upon that occasion, to express a hope that Mr. *Mackonochie* would learn that a mere literal compliance with the Monition in a merely evasive manner would not suffice. And they observed that literal compliance with regard to the actual limits of the Order was of course all that he was held to by Law; and for obedience to the spirit of the Order they could only trust to his own feelings, and his own conscience.

Fresh complaint of disobedience.

Mr. *Mackonochie* is now again before their Lordships upon complaint of acts of disobedience to the Monition, similar to those with which he was charged upon the former occasion.

The Appellant prays their Lordships to declare that Mr. *Mackonochie* has not complied with the Monition, inasmuch as, first, he knowingly and habitually sanctions the elevation of the Paten and Cup above the head of the officiating Clergyman in the Prayer of Consecration; and, secondly,

1870.

MARTIN v. MACKONOCHIE.

PART III. Judgment.

that he knowingly and habitually sanctions kneeling or prostration before the Consecrated Elements during the Prayer of Consecration.

The affidavits filed on behalf of the Appellant describe the acts done by the officiating Clergyman, during the administration of the Holy Communion, upon seven different Sundays in the months of December 1869 and January and February 1870. As the affidavits on the other side do not deny the general correctness of the account of what took place upon those occasions (nor did Mr. *Mackonochie* in his cross-examination), it may be assumed that they describe what is the ordinary course pursued in the administration of the Holy Communion in the Church of *St. Alban's*. It appears, then, that the practice is that, upon the officiating Clergyman reaching the solemn words of institution in the Prayer of Consecration, he drops his voice so as to be nearly inaudible, and a bell begins to toll; that he then elevates (not the Paten, but) a wafer, and, replacing it upon the Communion Table, bows his head down towards the Table, and remains for some seconds in this position; that he then elevates the Cup, and, replacing it on the Table, bows down as before; after which the administration of the Elements commences.

Affidavits.

The Appellant alleges that, on the days mentioned in the affidavits which he has filed, the Paten and Cup were elevated above the head of the officiating Clergyman during the Prayer of Consecration; and that during the same Prayer there was kneeling or prostration before the Consecrated Elements.

Allegations of disobedience and counter allegations.

To begin with his case as to the Elevation of the Cup and Paten, the Appellant has distinctly proved that, upon each of the seven Sundays mentioned in the affidavits, the officiating Clergyman, during the Prayer of Consecration, elevated a large wafer-bread above his head, and also, during the same Prayer, elevated the Cup, so that its rim was some inches above his head. These statements are opposed by the affidavits of the Clergymen who officiated upon the several Sundays mentioned in the Appellant's affidavits. Mr. *Howes*, who was the

officiating Clergyman on four of the Sundays, denies that, on either of those days, he raised or elevated the Paten or Chalice above his head during the Prayer of Consecration, and adds that he had not consciously, nor to the best of his knowledge, done so since the practice was discontinued by Mr. *Mackonochie* after December 30, 1866. Mr. *Stanton*, who officiated on Sunday, December 26, 1869, swears that he did not intentionally elevate the Paten or Cup above his head in the Prayer of Consecration; and Mr. *Willington*, who officiated on two of the Sundays, states positively that he did not elevate the Paten or Cup above his head in the Prayer of Consecration. It is to be observed that these affidavits might, according to a possible view entertained by the reverend gentlemen, be regarded by them as literally true, because the Paten was not elevated by them, but a wafer-bread, and the whole of the Cup was not raised above the head, but only the upper part of it. It appears from the cross-examination of Mr. *Mackonochie* that, after the institution of proceedings against him, he introduced the practice of elevating the wafer, and not the Paten. As he has confessed that his object on every occasion has been merely to comply literally with the Law, it was not unfair to presume that the change from the Paten to the wafer was made in order that he might not be accused of elevating the Paten. But Mr. *Mackonochie* stated to their Lordships (and they accept his statement) that 'he has in no way sheltered himself behind the difference between the wafer and the Paten, but has treated the wafer as the Paten, and considered the elevation of the wafer as equivalent to the elevation of the Paten.' It is sufficient, therefore, to say that if any such distinction had been attempted, it could not have been successful, as the elevation which is unlawful is that of the Consecrated Bread itself, and not of the Paten in which it is placed.

Again, there can be no doubt that the elevation of any part of the Cup above the head is an elevation to that extent of the Cup itself. This Mr. *Mackonochie* very properly admitted in his cross-examination. He said, 'The Cup is the

1870.

MARTIN v. MACKONOCHIE.

PART III. Judgment.

whole Cup: to raise any part of the Cup above the forehead is to raise the Cup above the forehead.'

Result of evidence as to elevation.

Now, the conclusion to be drawn from this state of facts is, that 'Mr. *Mackonochie*, having determined to yield the merest literal obedience to the precise letter of the Monition, had resolved that neither he nor his Curates should elevate the Paten or the Cup above their heads during the Prayer of Consecration; but, in consequence of keeping the exact degree of elevation intended, the officiating Clergyman unconsciously and unintentionally elevated the wafer and the Cup to the extent mentioned in the affidavits. But if Mr. *Mackonochie* has been (as he admitted) 'carefully scanning the Monition and the Order in Council to see how he could keep exactly within them,' and has been acting upon his understanding 'that legal judgments should be interpreted according to their letter,' he has no right to complain if the letter of the Monition is applied against him, and he is made accountable for an actual noncompliance with its terms, whatever his intentions to obey it may have been. The act of elevation to the prohibited degree was witnessed; the secret intention could not be known. That the elevation charged took place during the Prayer of Consecration appears from the evidence of Mr. *Mackonochie*, that the raising of the wafer and of the Cup takes place after the words of institution in each kind; consequently, the wafer, at least, must be raised as the Prayer is proceeding.

Kneeling or prostration.

The remaining charge to be considered against Mr. *Mackonochie* is, his sanctioning kneeling or prostration before the Consecrated Elements during the Prayer of Consecration. Their Lordships (as already mentioned) having upon the former occasion, when Mr. *Mackonochie* was charged with disobedience to the Monition, decided that the genuflection which he practised amounted to kneeling, Mr. *Mackonochie*, with the same object he always had in view, to pay only the closest literal obedience to the Monition, gave notice to his Curates that he intended thenceforth to bow without bending the knee at the part of the Prayer of Consecration where he had previously knelt.

This intention he and his Curates carried out, according to the description given in the affidavits, by bowing down towards the Table after replacing the wafer upon it, and remaining some seconds in that position, and adopting the same course with respect to the Cup. Mr. *Mackonochie* stated that on some of these occasions his forehead may have touched the Table, but that this was no part of the act of bowing, his object being merely a low bow. Their Lordships do not regard a reverential bow in the light of an act of prostration, as contended for by the learned Counsel for the Appellant; but the posture assumed and maintained for some seconds by Mr. *Mackonochie* is certainly not a mere bow, but an humble prostration of the body in reverence and adoration. Their Lordships consider that the charge against Mr. *Mackonochie* of sanctioning the prostration before the Consecrated Elements, is therefore fully proved.

Their Lordships cannot refrain from expressing their great regret at the course which Mr. *Mackonochie* has thought himself justified in adopting in his proposed submission to the authority of the Monition. He has (as he admitted in his cross-examination) 'carefully scanned the Monition, and the Order in Council, to see how nearly he could preserve the prohibited ceremonies, or,' as he expressed it, 'how far he could obey the Law of the Church' (or what he chooses to consider the Law of the Church) 'without disobeying the Law of the State.'

Mr. *Mackonochie* must be reminded that the right of the Church of *England* to ordain ceremonies is asserted by the thirty-fourth of the Articles of Religion, to which he has given his assent, and that none of the ceremonies which he practices are prescribed by the Church.

Result of motion.

In the attempt to satisfy his conscience, and to shelter himself under the narrowest literal obedience to lawful authority, Mr. *Mackonochie* has been a second time foiled. Upon the former occasion their Lordships, after expressing their opinion judicially that the Monition had been disobeyed, did not think it necessary to do more to mark their disapprobation of Mr. *Mackonochie's* course of proceeding

1870.

MARTIN v. MACKONOCHIE.

PART III. Judgment.

than by directing that he should pay the costs of the application. Upon this repetiton of the offence, their Lordships think that they ought to proceed further. They, therefore, declare that Mr. *Mackonochie* has not complied with the Monition in respect of the elevation of the Paten or wafer, nor as to abstaining from prostration before the Consecrated Elements. And they order that he be suspended for the space of three calendar months from the time of notice of the suspension from all discharge of his clerical duties and offices, and the execution thereof—that is to say, from preaching the Word of God, and administering the Sacraments, and celebrating all other clerical duties and offices—and, further, that he pay the costs of this application.

Order.

The following Order, dated November 25, 1870, was drawn up and issued in pursuance of their Lordships' judgment:—

'The Lords of the Committee, having maturely deliberated, pronounced that the Reverend *Alexander Heriot Mackonochie*, Clerk, Incumbent, and Perpetual Curate of the new Parish of *Saint Alban's*, *Holborn*, in the County of *Middlesex*, Diocese of *London*, and Province of *Canterbury*, the Respondent, had not obeyed the Monition, which had been duly served upon him, bearing date January 19, 1869, more especially in not having abstained from the elevation of the Paten during the Prayer of Consecration in the Order of the Administration of the Holy Communion, and from prostrating himself before the Consecrated Elements during the Prayer of Consecration, and their Lordships accordingly ordered that for such his disobedience he, the said Reverend *Alexander Heriot Mackonochie*, be suspended for the space of three months, from and after this day, from the discharge and execution of all the functions of his clerical office—that is to say, from preaching the Word of God, and administering the Sacraments, and performing all other duties of such his clerical office—and their Lordships directed that a Decree of Suspension be issued, suspending him accordingly, and that the same be published by affixing a copy thereof on or near the door of the Church of the

said new Parish of *St. Alban's*, on Sunday next, November 27, 1870, as also by personally serving it upon said Reverend *Alexander Heriot Mackonochie*. Their Lordships did further condemn the said Reverend *Alexander Heriot Mackonochie* in the costs incurred by the Appellant in these proceedings.

HENRY HEBBERT, *heretofore* CHARLES JAMES ELPHINSTONE . . . . } APPELLANT;

AND

THE REV. JOHN PURCHAS, CLERK . RESPONDENT.*

On Appeal from the Arches Court of Canterbury.

Construction of the Notice termed 'The Ornaments Rubric' prefixed to 'The Order for Morning and Evening Prayer,' which provides '*That such Ornaments of the Church, and of the Ministers thereof, at all times of their ministration, shall be retained, and be in use, as were in this Church of England, by the authority of Parliament, in the second year of the reign of King Edward VI.*'; and of the Rubric prefixed to 'The Order of Administration of the Lord's Supper, or Holy Communion,' which describes '*the Priest standing at the north side of the Table,*' with that which precedes the 'Prayer of Consecration,' and enjoins '*when the Priest, standing before the Table, hath so ordered the Bread and Wine, that he may with the more readiness and decency break the Bread before the People, and take the Cup into his hands, he shall say the Prayer of Consecration,*' as well as that appended to the same service regarding the Sacred Elements; and of the Rubric appended to the service for the Holy Communion—that '*to take away all occasion of dissension, and superstition, which any person hath or might have concerning the Bread and Wine, it shall suffice that the Bread shall be such as is usual to be eaten; but the best and purest Wheat-Bread that conveniently may be gotten.*'

* *Present*: The Lord Chancellor (Hatherley); the Archbishop of York (Dr. Thomson); the Bishop of London (Dr. Jackson); and Lord Chelmsford.

First, as regards the vestments of the Minister whilst officiating in the administration of the Holy Communion, or in other ministrations, the 'Ornaments Rubric,' as explained by the injunctions of Queen *Elizabeth*, A.D. 1559, and the advertisements of *Elizabeth*, A.D. 1564, made pursuant to the Act of Uniformity, 1 Eliz., c. 2, and explained by subsequent Visitation Articles, when construed with the Canons of 1603–4, and the Act of Uniformity, 13 and 14 Car. II., c. 4, does not permit the use by the Minister while officiating at the Holy Communion of the *Chasuble*, the *Alb*, or the *Tunicle*, but allows of the *Cope* being worn in ministering the Holy Communion on high feast days, in cathedrals, and collegiate churches, and requires the use of the *Surplice* in all other ministrations. The use of the *Chasuble*, *Alb*, and *Tunicle* by the celebrant, while officiating in the Communion Service, is illegal.

Second, the Rubrics regarding the position of the Minister during the Communion Service designate the north side of the Communion Table as the proper place for the Minister throughout the Communion Service, and also whilst reading the Prayer of Consecration; his proper position, therefore, is on the north side, or the north end, of the Table, if it is placed east or west facing the south, and not at that part of the west side of the Table which is nearest the north; the object being, that the people shall see him break the Bread, and take the Cup into his hands, which they cannot do if he stand with his back to the people, and between the people and the Holy Table.

Third, the Rubric regarding the Elements requires that the Bread to be used at the Holy Communion be pure wheaten bread, as is directed by the Canons of 1603–4, and not wafer-bread, which is illegal; and does not allow the administering of Wine mixed with water, instead of Wine only, to the communicants at the Lord's Supper; whether the water be mingled with Wine before or during the Communion Service.

The use of a *Biretta*, or cap, as a vestment in the service of the Church is illegal.

The provisions of the Canons of 1603–4, and Prayer Book, must be read together, as far as possible, and the Canons 17, 25, and 58, upon the vestments of the Ministers, are an exposition, and limitation of the

'Ornaments Rubric.' Such ornaments are to be limited, as to the vestments, by the special provision of the Canons themselves, which were not repealed by the Act of Uniformity, 13 and 14 Car. II., c. 4.

The cases of *Liddell* v. *Westerton* and *Martin* v. *Mackonochie* considered and confirmed.

Nov. 16–19, 21, 1870.

HEBBERT v. PURCHAS.

Statement.

THIS Appeal was brought from a sentence of the Arches Court of *Canterbury* in a cause of the office of the Judge, originally promoted by *Charles James Elphinstone* against the Respondent, the Rev. *John Purchas*, a Clerk in holy orders of the United Church of *England* and *Ireland*, the Perpetual Curate of the church, or chapel, of *St. James*, at *Brighton*, in the county of *Sussex*.

After the institution of the appeal *Elphinstone* died, and the Appellant *Hebbert* was substituted as Promoter in his place.

The cause was promoted in the Arches Court by virtue of Letters of Request by the late Lord Bishop of *Chichester*, in accordance with the provisions of the Church Discipline Act, 3 and 4 Vic., c. 86.

No appearance was given to the citation by *Purchas*, and the proceedings were carried on in default.

By the Articles admitted in the cause, *Purchas* was charged with having offended against the Laws Ecclesiastical by using and sanctioning the use of certain rites, ceremonies, acts, and observances in connection with the performance of Divine Service of his church.

Judgment in Court of Arches.

On February 3, 1870, the Judge of the Arches Court (Sir *Robert Phillimore*), by an Interlocutory Decree, pronounced that *Purchas* had offended against the Statute Law, and the Constitutions, and Canons Ecclesiastical of the realm, in having, during Divine Service in his church, used and worn, and authorised to be used and worn, certain vestments; and observed, and authorised to be observed, rites and ceremonies; and read, and authorised to be read, prayers; and done, and authorised to be done, other acts not prescribed by the Rubrics or Formularies of the United Church of *England* and *Ireland*; and admonished him to abstain from the use of, or sanctioning the use of,

1870.

HEBBERT v. PURCHAS.

Statement.

the rites, ceremonies, acts, or things in which he had so offended, and decreed a Monition to issue accordingly, and further condemned him in the costs, excepting the costs of such Articles as had not been sufficiently proved.

Appealed from.

The present Appeal was from this Decree, so far and inasmuch as the Judge omitted or declined to pronounce that *Purchas* had offended against the Statute Law, and the Constitutions, and Canons Ecclesiastical, first, by administering wine mixed with water to the communicants at the Lord's Supper, as pleaded in the sixteenth Article; second, by standing with his back to the people, between the people and the Holy Table, whilst reading the Prayer of Consecration in the Service of the Holy Communion in such wise as pleaded in the seventeenth Article; third, by the use of wafer-bread, instead of bread such as is usual to be eaten, in the administration of the Holy Communion, as pleaded in the twentieth Article; fourth, by causing holy water, or water previously blessed or consecrated, to be poured into divers receptacles for the same in the said church, in order that the same might be used by persons of the congregation, or by causing and permitting the same to be used by others, as pleaded in the twenty-fifth Article; fifth, by himself wearing, and sanctioning, and authorising the wearing by other officiating Ministers, whilst officiating in the Communion Service, and in the administration of the Holy Communion in the church, a vestment called a *Chasuble*, as pleaded in the thirty-sixth Article; sixth, by himself wearing, and causing or suffering to be worn by other officiating clergy, when officiating in the Communion Service in the church, a certain vestment called an *Alb*, instead of a *Surplice*; seventh, by causing or suffering to be worn by the officiating clergy, when officiating in the Communion Service in the said church, certain other vestments called *Tunics*, or *Tunicles*; eighth, by himself wearing, carrying, or causing or suffering other officiating clergy in the said church to wear, or bear in their hand, a certain cap, called a *Biretta*, during Divine Service, as pleaded in the thirty-eighth Article; and had also omitted or declined to admonish him against offending in future in

1870.

HEBBERT v. PURCHAS.

Statement.

the said matters complained of; and also omitted or declined to condemn him in the costs incurred by *Elphinstone* in respect of such matters.

As the Respondent did not appear, the Appeal was heard *ex parte.*

Mr. *A. J. Stephens*, Q.C., and Dr. *Tristram* (with them Mr. *T. D. Archibald* and Mr. *B. Shaw*) for the Appellant.*

Feb. 23, 1871.

After argument the consideration of their Lordships' judgment was reserved. Judgment was now delivered by

Judgment.

The LORD CHANCELLOR (Lord Hatherley) :—

In this case, which comes to us from the Arches Court of *Canterbury*, the learned Judge of that Court has directed a Monition to issue to the Reverend *John Purchas*, as to several matters and things complained of by the Promoter, and has condemned him in costs; and the Defendant has not appealed. But as to certain Charges contained in the sixteenth, seventeenth, twentieth, twenty-fifth, thirty-sixth, and thirty-eighth Articles of Charge, the learned Judge has refused or omitted to direct a Monition to issue against the Defendant, and to condemn him in the costs of these Articles; and against the decision upon these Articles the Promoter has appealed.

The substitution of *Hebbert* as Promoter, for the purpose of this Appeal, for *Elphinstone*, the Promoter in the Court below, since deceased, has been allowed by a former judgment of this Committee.†

The Rev. *John Purchas*, the Respondent, has not appeared, and the Committee has not had the assistance of the argument of Counsel on his behalf.

Charges against Respondent.

The Charges which are the subject of this Appeal are that the Respondent has offended against the Statute Law, and the Constitutions, and Canons Ecclesiastical, by administering wine mixed with water, instead of wine, to the communicants, as pleaded in the sixteenth Article; and

* It is deemed unnecessary to give an outline of the very elaborate argument of Counsel, as the several points are fully dealt with in the udgment.

† Law Reports, P.C., vol. iii., p. 245.

1871.

HEBBERT v. PURCHAS. Judgment.

by standing with his back to the people, between the people and the Holy Table, whilst reading the Prayer of Consecration in the Holy Communion, as pleaded in the seventeenth Article; and by the use of wafer-bread, instead of bread such as is usual to be eaten, in the administration of the Holy Communion, as pleaded in the twentieth Article; and by causing holy water, or water previously blessed or consecrated, to be poured into divers receptacles for the same in the said Church, in order that the same might be used by persons in the congregation, or by causing or permitting the same to be used by others, as pleaded in the twenty-fifth Article; and by himself wearing, and sanctioning, and authorising the wearing by other officiating Ministers, whilst officiating in the Communion Service, and in the administration of the Holy Communion in the said Church, a vestment called a *Chasuble*, as pleaded in the thirty-sixth Article; and by himself wearing, and causing or suffering to be worn by other officiating clergy, when officiating in the Communion Service in the said Church, certain other vestments called *Dalmatics*, *Tunics*, or *Tunicles*, and *Albs*, and by himself wearing, carrying, or causing or suffering other officiating Clergy in the same Church to wear or bear in their hand a certain cap, called a *Biretta*, during Divine Service, as pleaded in the thirty-eighth Article.

First as to vestments.

We find it convenient to adopt the order followed by the learned Dean of the Arches, and to examine first the charge of wearing, and causing to be worn, a *Chasuble*, *Tunics*, or *Tunicles*, and *Albs* in the celebration of the Holy Communion.

History of Ornaments Rubric.

It is necessary to review shortly the history of the Rubric usually known as the 'Ornaments Rubric,' which governs this question.

Edward's First Prayer Book.

The First Prayer Book of King *Edward* VI. (1549), contains the following Rubric at the beginning of the Communion Office:—

'Upon the day, and at the time appointed for the ministration of the Holy Communion, the Priest that shall execute the Holy Ministry shall put upon him the vesture apppointed for that ministration—that is to say, a white

1871.

HEBBERT v. PURCHAS. Judgment.

Albe plain, with a Vestment or *Cope*. And where there may be many Priests or Deacons, there so many shall be ready to help the Priest in the ministration as shall be requisite; and shall have upon them likewise the vestures appointed for their ministry—that is to say, *Albes* with *Tunicles*.'

Edward's Second Prayer Book.

In the Second Prayer Book of *Edward* VI. (1552), this was altered, and it was ordered that the Minister 'shall use neither Alb, Vestment, nor Cope; but being Archbishop or Bishop, he shall have and wear a Rochet, and being a Priest or Deacon, he shall have and wear a Surplice only.'

Elizabeth's Prayer Book,

The Prayer Book of *Elizabeth* (1559), provided that 'the the Minister at the time of the Communion, and at all other times of his ministration, shall use such ornaments in the church as were in use by authority of Parliament in the second year of the reign of King *Edward* VI., according to the Act of Parliament set in the beginning of this Book.'

This Committee has already decided, in *Westerton* v. *Liddell*, that the words 'by authority of Parliament in the second year of the reign of King *Edward* VI., refer to the First Prayer Book of King *Edward* VI.'

And Act of Uniformity.

The Act of Parliament set in the beginning of *Elizabeth's* Book is Queen *Elizabeth's* Act of Uniformity (1 Eliz., c. 2), and the twenty-fifth clause of that Act contains a proviso, 'that such ornaments of the Church and the Ministers thereof shall be retained and be in use, as were in this Church of *England* by authority of Parliament in the second year of the reign of King *Edward* VI., and until other order shall be therein taken by the authority of the Queen's Majesty, with the advice of the Commissioners appointed and authorised under the Great Seal of *England* for causes Ecclesiastical, or of the Metropolitan of this realm.'

The Prayer Book, therefore, refers to the Act, and the Act clearly contemplated further directions to be given by the Queen, with the advice of Commissioners or of the Metropolitan. It was not, apparently, thought desirable to effect an immediate outward change of ceremonies, although the adoption of the Second Prayer Book of *Edward*

1871.

HERBERT v. PURCHAS. Judgment.

VI., in lieu of the first, had effected a great change in the very substance of the Communion Service, with which the theory of the peculiar vestments (the *Albe* and *Chasuble*) was closely connected.

The Rubric and the proviso together seem to restore for the present the ornaments of the Minister which the second Prayer Book of King *Edward* had taken away. But *Sandys*, afterwards Archbishop of *York*, who assisted at the revision of the Prayer Book, gives to Archbishop *Parker* a different suggestion. 'Our gloss upon this text,' he says, 'is, that we shall not be forced to use them (the ornaments), but that others in the meantime shall not convey them away, but that they shall remain for the Queen.'(*Burnet's* Reformation, vol. ii., Records, p. 332.) The injunctions of *Elizabeth* appeared in the same year, 1559; and the forty-seventh orders 'that the churchwardens of every parish shall deliver unto the visitors the inventories of vestments, copes, and other ornaments, plate, books, and especially of grails, couchers, legends, processionals, hymnals, manuals, portasses, and such like appertaining to the Church' (*Cardwell*, Doc. Ann., i., p. 196 [Ed. 1839]). The Commissioners began to carry out these injunctions in the same year. One of their returns is in the Record Office (Calendar of State Papers, Domestic, 1547–1580, p. 148), which shows that they chiefly occupied themselves in taking inventories of Church ornaments, and of the service Books in use.

Followed by injunctions of 1559,

In the year 1564 appeared the advertisements of *Elizabeth*. They make order for the vesture of the Minister in these words:—In the ministration of the Holy Communion in cathedrals and collegiate churches, the principal Minister shall wear a *Cope*, with Gospeler and Epistoler agreeably, and at all other prayers to be said at the Communion Table to use no *Copes*, but Surplices.'

And by advertisements of 1564.

'That every Minister saying any public prayers or ministering the Sacraments or other rites of the Church, shall wear a comely Surplice with sleeves, to be provided at the charge of the parish.' (*Cardwell*, Doc. Ann., i., p. 326.)

These advertisements were very actively enforced within

1871.

HEBBERT v. PURCHAS. Judgment.

a few years of their publication. An inventory of the ornaments of 150 parishes in the Diocese of *Lincoln*, 1565–1566, has been published by Mr. *Edward Peacock*; and it shows that the *Chasubles*, or Vestments, and the *Albs*, were systematically defaced, destroyed, or put to other uses, and a precise account was rendered of the mode of their destruction. Proceedings took place under Commissions in *Lancashire* in 1565 and 1570; in *Carlisle* in 1573, and following years, when 'vestments seem to have disappeared altogether.' (Rev. *J. Raine*, on 'Vestments.' London, 1866.) There is no reason to doubt that all through the country commissions were issued to enforce the observance of the advertisements, within a few years after they were drawn up. The Visitation Articles of the Archbishops and Bishops about this time, show that the operation of the advertisements had been rapid and complete. Archbishop *Grindal*, in 1571, enquires 'whether all vestments, albs, tunicles, stoles, phanons, pixes, paxes, hand-bells, sacring-bells, censers, crismatories, crosses, candlesticks, holy water, stocks, images, and such other reliques and monuments of superstition and idolatrie be utterly defaced, broken, and destroyed' (Rit. Com., 2nd Rep., App., p. 408); Archbishop *Parker*, in 1575, asks 'in the time of celebration of Divine Service whether they wear Surplices.' (Rit. Com., 2nd Rep., App., p. 416); *Aylmer*, Bishop of *London*, uses the same form of question as Archbishop *Grindal* (*ibid.*, p. 418); *Sandys*, Archbishop of *York*, enquired, in 1578, 'whether your Parson, Vicar, or Curate at all times, in saying the Common Prayer on Sundays and holidays, and in administering of the Sacrament, doth use and retain the Surplice, yea or nay.' (*Ibid.*, p. 422.)

Visitation Articles.

Upon the whole there is abundant evidence that within a few years after the advertisements were issued the vestments used in the Mass entirely disappeared.

Attitude of Puritan party.

It is true that for some years after the appearance of the advertisements, great reluctance was exhibited by the Puritan party to the use of the Surplice, and in the struggle against the use, they sometimes asserted that, if the Surplice were insisted upon, then, by virtue of the Rubric

and Act of Parliament, the other vestments mentioned in the First Prayer Book of *Edward* VI. should also be used.

Evidence of a Tract (1605).

In a somewhat rare tract printed in the reign of James I., 1605, and addressed to the Bishop of *Worcester*, defending 'the not exact use of the authorised Book of Common Prayer,' the writer (p. 34) argues that no such order was made by the Queen as was directed by the Act of Parliament; yet even he admits that the Metropolitan, 'on the Queen's Mandative Letters that some order might be taken, had conference and communication, and at the last, by assent and consent of the Ecclesiastical Commissioners, did think such orders as were specified in the advertisements meet and convenient to be used and followed' (p. 36); but he asserts that they were of no value, since the Queen's assent was not yielded.

This last proposition can hardly be maintained; for if the Queen's Mandative Letter preceded the compilation of the advertisements, and if, as it appears abundantly, they were afterwards enforced by her authority, her assent must be presumed. It appears probable that the Queen hesitated before the advertisements were thus enforced; as to which see a remarkable letter from the Archbishop to *Cecil*, on March 28, 1566, cited by Mr. *Perry* in his book on 'Lawful Church Ornaments' (p. 209), from the *Parker* Correspondence, on which Mr. *Perry* remarks, 'It would seem that the Archbishop's application had at length some success, for immediately afterwards he sent his letter to the Bishop of *London* for conformity,' and in the letter to the Bishop he requests him 'to transmit the book of advertisements to the other Suffragans of the province.'

Contemporaneous evidence.

But, as has been said, the contemporaneous evidence as to the abolition of all vestments obnoxious to the Puritan party (other than the Surplice, hood, and tippet, and the square cap) is abundant.

'A Part of a Register.'

In a scarce book, called 'A Part of a Register,' in which is a considerable number of documents collected by those who objected to Church Ritual, the complaint is uniformly

1871.

HEBBERT v. PURCHAS. Judgment.

against Copes and Surplices. Thus, in a letter by A. G, 1570, p. 13, he complains of 'crossing, coping, and surplessing.' A report of the examination of *Smith*, *Nixon*, and others before the Lord Mayor, the Bishop of *London*, and other Commissioners, 1567, p. 28, describes *Hawkins*, one of the accused, as saying, 'Surplesses and copes be superstitious and idolatrous.' *Ireland*, another of them, (p. 32) says to the Bishop, 'But you go like one of the Mass Priests still;' to which the Bishop replies, 'You see me wear a Cope or a Surpless at *St. Paul's*. I had rather minister without these things, but for order's sake and for obedience to the Prince.'

'A View of Antichrist,' etc.

In another of these documents, called 'A View of Antichrist, his Laws and Ceremonies,' there is a careful enumeration of ornaments complained of as Popish, not mentioning Alb, nor Chasuble; but (p. 63) there is mention of the 'Cap, the Tippet, the Surplice for small churches, the Cope for great churches, furred hoods in summer for the great Doctors, silken hoods in their quiers upon a Surplesse, and the grey Amise with the catte's tails.' This mention of the Amise is the only notice in the many tracts collected in the register of any specific vestment, other than the Surplice and Cope being worn. But in the same book is contained 'A Letter by Master *Robert Johnson* to Master *Edwin Sandys* (1573),' in which, at p. 104, he says, 'You must yield some reason why the tippet is commended, and the stole forbidden; why the vestment is put away, and the cope retained; why the alb is laid aside, and the surplice is used; or why the chalice is forbidden in the Bishop of *Canterbury's* Articles, or the grey amice, by the Canon more than the rest, why have they offended, etc.' *Edward Dering* (1593), in another tract in the same book, speaks of the grey amice having been specially forbidden in the 'Book of the Discipline of the Church of *England*.' He goes on to say that other vestments, equally superstitious, are used; and in a passage immediately before this he asks, 'how he can subscribe to the ceremonies in cathedral churches, where they have the Priest, Dean, and Sub-Dean in copes and vestments all as before;' but that he is

1871.

HEBBERT v. PURCHAS. Judgment.

alluding in this to the Cope and Surplice is plain, both from the before cited statement of the Bishop of *London* to *Hawkins*, and from the question in *Johnson's* tract, 'why the Vestment is put away, and the Cope retained, the Alb laid aside, and the Surplice in use;' and the enumeration of Popish ornaments in 'The View of Antichrist.'

Now all the Tracts above cited are dated within ten years after the date of the advertisements, and the complaints so bitterly made as to the Cope and Surplice would certainly have been extended to the Alb and Chasuble, had they not then ceased to exist.

In the correspondence with foreign reformers, called the '*Zurich* Letters,' the controversy is treated as having been confined to the Cope and Surplice.

At the *Hampton Court* Conference the Puritans objected to the Surplice, as 'a kind of garment which the Priests of Isis used to wear.' (*Cardwell*, Conferences, p. 200.) There was evidently no other vestment in use to which they could object. The revised Prayer Book, issued soon after, retained the Ornaments Rubric in the same form as in the Prayer Book of Queen *Elizabeth*. The Canons of 1603-4, enacted by both Convocations, and ratified by the King's consent, sanctioned the use of this Prayer Book. But whilst thus implicitly sanctioning the Ornaments Rubric, the Canons also provide specially for the vesture of the Minister. Canon 24 directs the use of a 'decent cope' for the principal Minister in the Holy Communion in cathedrals and collegiate churches, 'according to the advertisements published *Anno 7 Elizabeth*; and Canon 58 directs 'that every Minister saying the public prayers, or ministering the Sacraments, or other rites of the Church, shall use a decent and comely surplice with sleeves, to be provided at the charge of the parish.'

Prayer Book of 1604.

Canons of 1603-4.

Their Lordships think it needless to adduce authorities to show that there was no attempt to revive or use the *Chasuble*, *Alb*, or *Tunicle* between the years 1604 and 1662.

The Ornaments Rubric of 1662 is as follows:—'*And here is to be noted that such ornaments of the Church, and*

Ornaments Rubric of 1662.

1871.

HEBBERT v. PURCHAS. Judgment.

of the Ministers thereof, at all times of their ministration, shall be retained, and be in use, as were in this Church of England, by the authority of Parliament, in the second year of the reign of King Edward VI.' The form of this Rubric is different from that of the preceding Prayer Book, and follows, for the most part, the wording of the proviso of the Act of Queen *Elizabeth*.

The learned Judge in the Court below assumes that the Puritan party at the *Savoy* Conference objected to this Rubric, whereas it was the Rubric of *James* that they were discussing. Upon that, the Puritans observed that, 'Inasmuch as this Rubric seemeth to bring back the cope, alb, and other vestments forbidden by the Common Prayer Book, 5 and 6 Edw. VI., and so for reasons alleged against ceremonies under our eighteenth general exception, we deem it may be wholly left out.' The Rubric had been in force for nearly sixty years, and they do not allege that the vestments had been brought back; nor would a total omission of the Rubric have been a protection against them. The Bishops in their answer show that they understand the Surplice to be in question, and not the vestments. (*Cardwell*, Conferences, pp. 314, 345, 351.) But the learned Judge through this oversight, has overlooked the most important part of the proceedings. The Bishops determined that the Rubric 'should continue as it is.' But after this they did, in fact, recast it entirely. It must not be assumed that alterations made under such circumstances were made without thought, and are of no importance. The Rubric had directed the Minister to 'use at the time of the Communion, and at all other times of his ministrations,' the ornaments in question. The statute of *Elizabeth* did not direct such use, nor refer to any special times of ministration, but it ordered simply the retaining of the ornaments till further order made by the Queen. The Bishops threw aside the form of the old Rubric, and adopted that of the statute of *Elizabeth*, but added the words 'at all times of their ministration' without the words which had in all former Rubrics distinguished the Holy Communion from other ministrations; a mode of expression more suitable

1871.

HEBBERT v. PURCHAS. Judgment.

to a state of things wherein the vestments for all ministrations had become the same. The change also brought in the word 'retained,' which, it has been argued, would not include things already obsolete. Whatever be the force of these two arguments, the fact is clear that the Puritans objected to a Rubric differing from this; and that after their objections the Rubric was recast, and brought into its present form.

With regard to the suggestion attributed to the House of Lords 'whether the Rubric should not be mended where all vestments in time of Divine Service are not commanded which were used by *Edward* VI.' (*Cardwell*, Conferences, p. 274), the learned Judge has overlooked the fact that this applies to the earlier Rubric; and the suggestion did not emanate from the House of Lords, nor was it ever adopted by that body. And the learned Judge omits to observe, that the Rubric of *James*, which was objected to, was amended after the suggestion.

Subsequent to Act of Uniformity the vestments were not used.

From the passing of the *Act of Uniformity* there is abundant evidence to show that the vestments in question were not used at all. Their Lordships may refer to the various Visitation Articles published in the Second Report of the Ritual Commission and elsewhere, as showing that the *Surplice* alone was to be used, and that deviations from that rule were on the side of defect, and not in the direction of returning to the vestments of the Mass. Some of these Articles were published by Bishop *Cosin* and others, who took part in the revision of the Prayer Book. In the Sixth Article Bishop *Cosin* enquires, 'Have you a large and decent surplice (one or more) for the Minister to wear at all times of his public ministration in the church?' (Rit. Com., 2nd Report, App., p. 601.) The repetition of the words 'at all times' of his ministration, the exact words of the Rubric, is very significant as a contemporaneous exposition of it by one of its framers.

Summary of facts in relation to Ornaments Rubric.

These, then, are the leading historical facts with which we have to deal in the difficult task of construing the Rubric of Ornaments. The Vestment, or Cope, Alb, and Tunicle were ordered by the First Prayer Book of *Edward*

1871.

HEBBERT v. PURCHAS. Judgment.

VI. They were abolished by the Prayer Book of 1552, and the Surplice was substituted. They were provisionally restored by the statute of *Elizabeth*, and by her Prayer Book of 1559. But the injunctions and the advertisements of *Elizabeth* established a new order within a few years from the passing of the statute, under which *Chasuble*, *Alb*, and *Tunicle* disappeared. The Canons of 1063–4, adopting anew the reference to the Rubric of *Edward* VI., sanctioned in express terms all that the advertisements had done in the matter of the vestments, and ordered the *Surplice* only to be used in parish churches. The revisers of our present Prayer Book in 1662, under another form of words, repeated the reference to the second year of *Edward* VI., and they did so advisedly, after attention had been called to a possibility of a return to the vestments.

The advertisements of Elizabeth are of legal obligation.

The authority of the advertisements has been questioned on the ground that it has never been shown that they received the assent of the Queen. Supposing, for the sake of argument, that the advertisements did not receive the official assent of the Queen, but were acted upon under a number of Royal Commissions, and with the approval of the Metropolitan, their Lordships think that this was a 'taking other order' within the meaning of the statute (1 Eliz., c. 2, s. 25). There is no doubt that the advertisements were carried into effect as legally binding, and were enforced by Royal Commissions. There is no doubt that they were accepted, in some cases by reluctant people, as of legal obligation; and their authority is expressly recognised by the Twenty-fourth Canon of 1603–4.

In the case of *Macdougall* v. *Purrier* (4 Bli. H. L. Cases, 433), the House of Lords presumed the enrolment in Chancery of a Decree of Commissioners appointed by an Act of *Henry* VIII., for settling the tithes in *London*, although no such enrolment could be found, on the principle that where instruments have been long acted upon, and acquiesced in by parties interested in opposing their effect, all formalities shall be presumed to have been observed. No special form of consulting the Metropolitan is prescribed to the Queen.

1871.

HEBBERT v. PURCHAS.

Judgment.

Their Lordships are now called on to determine the force of the Rubric of 1662, and its effects upon other regulations, such as the Canons of 1603–4. They do not disguise from themselves that the task is difficult.

Construction of Rubric of 1662

The learned Judge in the Court below has said, that 'the plain words of the statute, according to the ordinary principles of interpretation, and the construction which they have received in two judgments of the Privy Council, oblige me to pronounce that the ornaments of the Minister, mentioned in the First Prayer Book of *Edward* VI., are those to which the present Rubric referred.' (Law Rep., 3rd Ad. and Ecc., p. 94.) 'They are, for Ministers below the order of Bishops, and when officiating at the Communion Service, *Cope*, *Vestment* or *Chasuble*, *Surplice*, *Alb*, and *Tunicle*; in all other services the Surplice only, except that in cathedral churches and colleges the academical hood may also be worn.' He considers that the object of the advertisements of *Elizabeth* 'was to receive as great an amount of decent Ritual as the circumstance of the time would permit.'

by the Dean of the Arches;

of the advertisements

and Visitation Articles.

'As to the Visitation Articles,' from the time of the statute of *Charles* II., the learned Judge observes, 'the same principle applies to them as to the Advertisements and Canons, and, indeed, as to every attempt to procure a decent Ritual since Queen *Elizabeth's* time; namely, that the authorities were content to order the minimum of what was requisite for this purpose.' (Law Rep., 3 Ad. and Eccl., p. 94.) Remarking upon the question, whether the consent of the King to the Canons of 1603–4 could be held to be an execution to the powers given to the Queen by the statute of *Elizabeth*, the learned Judge, after some comments which their Lordships do not feel called on to examine, says 'a subsequent statute, which expressly revived a prior statute inconsistent with the advertisements of *Elizabeth* would, by necessary implication, repeal them.' (*Ibid.*, p. 87.)

Rejected by the Committee.

The Committee is unable to accept this interpretation of the Advertisements and the Visitation Articles as the true one. Their Lordships think that the defacing and destroy-

1871.

HEBBERT v. PURCHAS. Judgment.

ing, and converting to profane and other uses, of all the vestments now in question, as described in the *Lincoln* MS. published by Mr. *Peacock*, show a determination to remove utterly these ornaments, and not to leave them to be used hereafter, when higher Ritual might become possible. They think that the enquiries of *Sandys* and *Aylmer* already quoted, show that the *Surplice* was not to be the least or lowest, but the only vestment of the parochial Clergy. They think that the Articles of Visitation (cited, Rit. Com., 2 Rep., App.) issued at and after the passing of the *Act of Uniformity*, which ask after the 'fair surplice for the Minister to wear at all times of his ministration,' without any suggestion of any other vestment, could scarcely have been put forth by Bishops desirous of a more elaborate Ritual, and aware that the vestments were now of statutable obligation. They think that in prescribing the Surplice only, the Advertisements meant what they said, the Surplice only; and that strong steps were taken to ensure that only the Surplice should be used.

A minimum and maximum of Ritual inconsistent with the Rubric considered as a positive order.

Their Lordships remark further that the doctrine of a minimum of Ritual represented by the Surplice, with a maximum represented by a return to the mediæval vestments, is inconsistent with the fact that the Rubric is a positive order, under a penal statute, accepted by each Clergyman in a remarkably strong expression of 'assent and consent,' and capable of being enforced with severe penalties. It is not to be assumed, without proof, that such a statute was framed so as to leave a choice between contrary interpretations, in a question that had ever been regarded as momentous, and had stirred, as the learned Judge remarks, some of the strongest passions of man. Historically all the communications between Archbishop *Parker* and the Queen, and her Government, indicate a strong desire for uniformity, and the Articles of Visitation after 1662 were all framed with the like object. If the Minister is ordered to wear a *Surplice* at all times of his ministration, he cannot wear an *Alb* and *Tunicle* when assisting at the Holy Communion; if he is to celebrate the

Judgment.

Holy Communion in a *Chasuble*, he cannot celebrate in a *Surplice*.

In order to decide the question before the Committee, it seems desirable first to examine the effect of the Church legislation of 1603–4. The 14th Canon orders the use of the Prayer Book without omission or innovation; and the 80th Canon directs that copies of the Prayer Book are to be provided, in its latest revised form, and, by implication, the Ornaments Rubric is thus made binding on the Clergy. Canon 24 directs the use of the Cope in cathedral and collegiate churches upon principal Feast Days, 'according to the advertisements for this end, *anno* 7 *Elizabeth*.' Canon 58 says that 'every Minister saying the public prayers, or ministering the Sacraments or other rites of the Church, shall wear a decent or comely surplice with sleeves, to be provided at the charge of the parish.' There is no doubt that the intention here was not to set up a contradictory rule, by prescribing vestments in the Prayer Book, and a *Surplice* in the Canons, which give authority to the Prayer Book. It could not be intended, in recognising the legal force of the advertisements, to bring back the things which the advertisements had taken away, nor could it be expected that either Minister or people should provide vestments in lieu of those which had been destroyed, and accordingly no direction is given with regard to them. The provisions of the Canons and Prayer Book must be read together, as far as possible, and the Canons upon the vesture of the Ministers must be held to be an exposition and limitation of the Rubric of Ornaments. Such ornaments are to be used as were in use in the second year of *Edward* VI., limited as to the vestments, by the special provisions of the Canons themselves; and the contemporaneous exposition of universal practice shows that this was regarded as the meaning of the Canons. There does not appear to have been any return to the vestments in any quarter whatever.

Effect of legislation of 1603–4.

The Canons of 1603–4 and Prayer Book must be read together.

The Act of 1662 sanctioned a Prayer Book with a different Rubric, but it referred back to the second year of King

How far was the Ornaments Rubric of Edward's

1871.

HEBBERT v. PURCHAS.

Judgment.

Edward VI., and in some sense or other revived the Rubric of King *Edward's* First Book; the question is, in what sense, and in what degree. There seem to be three opinions on this point.

First Book revived by the Book of 1662?

Three opinions.

One, that the Act of 1662 repealed all legislation on the subject of the ornaments of the Minister; the second, that the Act and the Canons set up two distinct standards of Ritual on this subject; and the third, that the Act of 1662 is to be read with the Canons of 1603 still in force, and harmonised with them.

First the Act of 1662 repealed all legislation made after 1549.

I. The first is that expressed by Dr. *Lushington*, in the case of *Westerton* v. *Liddell*, that in reviving the Rubric of 1549 the Act of 1662 excluded and repealed all provisions whatever of Act of Parliament or Canon which had been made after 1549 and prior to 1662. This view was adopted by Sir *John Dodson* in the same case, when it reached the Arches Court. The consequence of this must be, that every celebration of the Holy Communion in a *Surplice* only, from 1662 to the present day, would be a violation of the statute. The Canons of 1603–4 being repealed as to this matter, together with the advertisements on which the Canons were built, there would be no legal warrant for using the Surplice and omitting to use the vestments at the Holy Communion. Yet there is no doubt of the practice. For one hundred and eighty years the Vestment was never worn. And thus there would be the unusual occurrence of a statute repealing former legislation, and fortified with heavy penalties, which was systematically broken, not only by one and all of those who had declared their unfeigned assent and consent to all and everything contained in the Book of Common Prayer, but by the framers of the Rubric themselves immediately after the confirmation of it by Act of Parliament. Nor is there during that time one single instance of calling to account or censuring anyone for his particular share in an universal violation of the law. It appears plain to their Lordships from these facts that the idea of the repealing power of this Rubric is a modern one.

Result of this view.

The Act of Uniformity of Chas. II. is not a repealing Act,

But the 24th clause of the *Act of Uniformity* (13 and 14 *Car.* II., c. 4) shows, that it was not the intention of the

1871.

HEBBERT v. PURCHAS. Judgment.

passers of the Act to repeal past laws. It provides that 'the several good Laws and Statutes of this realm, which are now in force, for the uniformity of prayer and the administration of the Sacraments . . . shall stand in full force and strength, to all intents and purposes whatever, for the establishing and confirming the said Book.' The laws were to remain; but they were to bear on the new Book of Common Prayer, and not upon any former one. Now, the Prayer Book up to that time in use—the book which was the subject of the *Hampton Court* Conference—rested upon the Canons of 1603–4; and it is hard to suppose that the most obvious 'laws,' of all those in force up to that moment, were excluded from the saving power of the 24th clause. Their Lordships think that the Canons relating to the *vestments* of the Ministers were not repealed by the *Act of Uniformity*, and that the Canons had the same force after the passing of that Act which they had before. The contemporary exposition on this point is very strong. Bishop *Henchman*, of *Salisbury*, in 1662, in inquiring whether his churches are provided with the Prayer Book 'newly established,' enquires for the 'comely, large, and fine surplice,' and for no other vestment. The same enquiry for the 'comely large surplice for the Minister to wear at all times of his ministrations,' is found in a great number of Visitation Articles, republished by the Ritual Commission (2nd Rep., App., pp. 606, 614, and following), extending from 1662 to the end of the century. Bishop *Fuller*, of *Lincoln*, A.D. 1671, Bishop *Gunning*, of *Ely*, A.D. 1679, and Bishop *Trimnell*, of *Norwich*, A.D. 1716, refer to the 58th Canon as unrepealed, in the margin of their Visitation Articles upon the *Surplice*. Their Lordships are of opinion that the Canon was not repealed, and that the ecclesiastical authorities had no suspicion that it had been.

and this view is supported by contemporary evidence.

II. The next opinion is, that the Canons and the *Act of Uniformity* being irreconcilable, set up distinct standards of Ritual, the one of a more elaborate, the other of a severer type; the one a *maximum*, the other a *minimum*; the one represented by the Rubric, the other by the 58th Canon. To this view the learned Judge in the Court below appears

Second, the Act and Canons set up distinct standards of Ritual, which is an untenable view.

1871.

HEBBERT v. PURCHAS. Judgment.

to incline. Their Lordships, notwithstanding this authority, are obliged to come to the conclusion that this view is at variance with all the facts of the case. They have already observed that the *Chasuble*, *Alb*, and *Tunicle* were swept away with severe exactness in the time of Queen *Elizabeth*, and that there was no trace of any attempt to revive them. The *Act of Uniformity* reflects by the strictness of its provisions the temper of the framers. The fate of a 'proviso as to the dispensation with deprivation, for not using the cross and surplice,' which was sent down from the House of Lords to the House of Commons, illustrates this. The Commons rejected the proviso (Commons' Journals, viii., 413), and in the subsequent conference between the two Houses the Manager, Serjeant *Charlton*, gave, amongst other reasons for rejecting the proviso, 'that it would unavoidably establish schism . . . . that he thought it better to impose no ceremonies than to dispense with any; and he thought it very incongruous at the same time when you are settling uniformity to establish schism.' (Lords' Journals, vol. xi., p. 449.) And the House of Lords agreed that this proviso should be struck out. (Lords' Journals, vol. xi., p. 450.) It cannot be supposed that an Act which applied the principle of uniformity so strictly in one direction, was intended on the other to open the door to a return to practices that were suspected as Romish, and this without serious remonstrance in either House from the minority. The purpose of the Act is clear. It was to establish an uniformity upon all parties alike. That is its language, and that is the interpretation it bore with those in authority, who had to expound it in Visitation Articles and the like.

Third, that the Act of 1662 is to be read with the Canons of 1603,

III. The third opinion remains that the provisions of the Rubric of *Edward* VI. are continued, so far as they are not contrariant to other provisions still in force. And here it is to be observed again that the Rubric was altered, after refusal to listen to the Puritan objections, to a form different from that of any former Rubric, by introducing the word 'retained.' Both in the statute of *Elizabeth* and in the Rubric in question the word 'retain' seems to

mean that things should remain as they were at the time of the enactment. *Chasuble*, *Alb*, and *Tunicle* had disappeared for more than sixty years; and it has been argued fairly, that this word would not have force to bring back anything, that had disappeared more than a generation ago. To retain means, in common parlance, to continue something now in existence. It is reasonable to presume that the alteration was not made without some purpose; and it appears to their Lordships, that the words of the Rubric strictly construed would not suffice to revive ornaments, which had been lawfully set aside, although they were in use in the second year of *Edward* VI. But, whether this be so or not, their Lordships are of opinion that as the Canons of 1603–4, which in one part seemed to revive the vestments, and in another to order the Surplice for all ministrations, ought to be construed together, so the *Act of Uniformity* is to be construed with the two Canons on this subject, which it did not repeal, and that the result is that the *Cope* is to be worn in ministering the Holy Communion on high feast days in cathedrals and collegiate churches, and the *Surplice* in all other ministrations. Their Lordships attach great weight to the abundant evidence which now exists that from the days of *Elizabeth* to about 1840, the practice is uniformly in accordance with this view, and is irreconcileable with either of the other views. Through the researches that have been referred to in these remarks, a clear and abundant *expositio contemporanea* has been supplied, which compensates for the scantiness of some other materials for a judgment.

and this view is supported by historical usage.

It is quite true that neither contrary practice, nor disuse can repeal the positive enactment of a statute, but contemporaneous and continuous usage is of the greatest efficacy in law for determining the true construction of obscurely framed documents. In the case of the *Attorney-General* v. the *Mayor of Bristol* (2 Jac. and W., p. 321) Lord *Eldon* observes: 'Length of time (though it must be admitted that the charity is not barred by it), is a very material consideration, when the question is, what is the

Usage helps a correct interpretation.

1871.

HEBBERT v. PURCHAS. Judgment.

effect and true construction of the instrument. Is it according to the practice and enjoyment which has obtained for more than two centuries, or has that practice and enjoyment been a breach of trust?' We may ask, in like manner, what is the true construction of the Act of of 1662, and of the Rubric which it sanctioned. Is it according to the practice of two centuries, or was the practice a continual breach of the Law, commanded and enforced by the Bishops, including the very Bishops who aided in framing the Act?

The learned Judge relies on two former judgments of this Committee as having almost determined the question of vestments; one of them in the case of *Westerton* v. *Liddell*, and the other in the case of *Martin* v. *Mackonochie*.

The question of vestments was not determined in Liddell v. Westerton,

In *Westerton* v. *Liddell* the question which their Lordships had to decide was, whether the Rubric which excluded all use of crosses in the service, affected crosses not used in the service, but employed for decoration of the building only, and they determined that these were unaffected by the Rubric.

They decided that the Rubric in question referred to the Act passed in 2 and 3 *Edw.* IV., adopting the First Prayer Book, and not to any Canons or Injunctions having the authority of Parliament, but adopted at an earlier period. Their Lordships feel quite free to adopt both the positive and the negative conclusions thus arrived at. In construing the expressions made use of in that judgment, it should be borne in mind, that this question of the *Vestments* was not before the Court.

nor in Martin v. Mackonochie.

In *Martin* v. *Mackonochie* the Committee stated anew the substance of the judgment in *Westerton* v. *Liddell* upon this point, but did not propose to take up any new ground.

Result.

Their Lordships will advise her Majesty, that the Respondent has offended against the Laws Ecclesiastical in wearing the *Chasuble*, *Alb*, and *Tunicle*; and that a Monition shall issue against the Respondent accordingly.

The Biretta.

With respect to the cap called a *Biretta*, which the Respondent is said to have carried in his hand, but not to have worn in church, their Lordships would not be justi-

1871.

HEBBERT v. PURCHAS. Judgment.

fied, upon the evidence before them, in pronouncing that the Respondent did an unlawful act.

Holy water.

As to holy or consecrated water in the church, the evidence does not go to the full extent of the charge. There is no proof whatever that the water placed in the church was consecrated at all, nor that it was put there by the Respondent, with the purpose of its being used as the congregation seems to have used it. This is a penal proceeding, and each charge must be strictly proved as alleged. Upon this point, too, the Appeal must be disallowed.

The mixed Chalice.

Their Lordships now proceed to the Sixteenth Article, which charges that on a certain day the Respondent 'administered wine mixed with water instead of wine to the communicants at the Lord's Supper.' The learned Judge in the Court below has decided that it is illegal to mix water with the wine at the time of the Service of Holy Communion; but he decides that water may be mixed with the wine 'provided that the mingling be not made at the time of the celebration.' (Law Rep., 3 Ad. and Eccl., p. 102.) For this view the learned Judge quotes, amongst other authorities, Bishop *Andrews*, but it has escaped him that the practice of Bishop *Andrews* was that which he condemns; in his Consecration Service the Bishop directs as follows: —*Episcopus de novo in calicem ex poculo quod in sacrâ mensâ stabat, effundit admistâque aqua, recitat clare verba illa consecratoria.* (*Sparrow's* Articles, p. 396, etc.) The learned Judge considers that the act of mixing has some symbolical meaning, but he holds—referring to his judgment in *Martin* v. *Mackonochie* (Law Rep., 2 Ad. and Eccl., 216)—that it was 'wholly unconnected with any Papal superstition, or any doctrine which the Church of *England* has rejected.' Nor does it appear that the controversy between the Romish and Reformed Churches, turned so much upon the symbolism of the mixed cup, as upon the necessity of its use.

Two questions involved.

Their Lordships find here two questions for their consideration. Since it has been decided by this Committee, that additional ceremonies or innovations are excluded by implication by the Service for Holy Communion; or, in

1871.

HEBBERT v. PURCHAS. Judgment.

other words, that the Service for Holy Communion is not only a guide, but a sufficient guide in its celebration; and since the learned Judge has decided that the act of mingling wine with water in the Service, with a view to its administration, is one of the additional ceremonies so excluded, the first question is whether the doing the act before the Service, and in the vestry or elsewhere, could so alter the symbolical character of the act that the cup might be brought in and consecrated, and administered to the people, without constituting an innovation or additional ceremonial act beyond what is ordered in the Service.

Is the previous mingling of water with wine an additional ceremony?

If this question be decided in the affirmative, the second question would be, whether upon a fair construction of the directions of the Rubrics, this previous mingling could take place without violation of the Rubrics.

The first question is, whether this is an additional ceremony, not provided in the Rubric. The second question is, whether it is contrary to the express directions of the Rubric.

On the former question their Lordships observe that, whether the water mingled with the wine be used because Christ himself is believed to have used it, or in order to symbolise the water from the rock given to the thirsty Israelites, or the blood and water from the side of our Lord, or the union of Christ with His people (the water being a type of the people), or the union of two natures in the one Lord, it can scarcely be said that the reception of the mingled chalice had no share in this symbolism, but only the act of mingling. Their Lordships are unable to arrive at the conclusion that, if the mingling and administering in the Service water and wine is an additional ceremony, and so unlawful, it becomes lawful by removing from the Service the act of mingling, but keeping the mingled cup itself and administering it. But neither Eastern or Western Church, so far as the Committee is aware, has any custom of mixing the water with wine apart from and before the Services.

Is it allowed by the Rubric?

As to the second question, the addition of water is prescribed in the Prayer Book of 1549; it has disappeared

1871.

HEBBERT v. PURCHAS. Judgment.

from all the later Books, and this omission must have been designed. The Rubric of 1662, following that of 1604, says, 'The bread and wine for the Communion shall be provided by the Curate and Churchwardens at the charges of the parish.' So far wine, not mixed with water, must be intended. The Priest is directed in the Rubric before the Prayer for the Church Militant to place on the Table 'so much bread and wine as he shall think sufficient.' Of so much of this wine as may remain unconsecrated it is said that 'the Curate shall have it to his own use.' These directions make it appear that the wine has not been mingled with water, but remains the same throughout. If the wine had been mingled with water, before being placed on the Table, then the portion of it that might revert to the Curate would have undergone this symbolical mixing; which cannot surely have been intended.

Their Lordships gladly leave these niceties of examination to observe, that they doubt whether this part of the Article is of much importance. As the learned Judge has decided the act of mingling the water with the wine in the Service is illegal, the private mingling of the wine is not likely to find favour with any. Whilst the former practice has prevailed both in the east and in the west, and is of great antiquity, the latter practice has not prevailed at all; and it would be a manifest deviation from the Rubric of the Prayer Book of *Edward* VI., as well as from the exceptional practice and directions of Bishop *Andrews*. Upon this Sixteenth Article, however, whether it be more or less important, their Lordships allow the Appeal, and will advise that a Monition should issue against the Respondent.

Wafer-bread.

The Twentieth Article charges the Respondent with using on divers occasions 'wafer-bread, being bread made in the special shape and fashion of circular wafers, instead of bread such as is usual to be eaten,' and with administering the same to the communicants. The Rubric of the Prayer Book now in force runs thus:—'And to take away all occasion of dissension and superstition, which any person hath or might have concerning the bread and wine, it

1871.

HEBBERT v. PURCHAS. Judgment.

shall suffice that the bread be such as is usual to be eaten; but the best and purest wheat bread that conveniently may be gotten.' This is the same with the Rubrics of 1552, 1559, and 1604, with two exceptions. The present Rubric omits after 'eaten' the words 'at the table with other meats,' and it introduces words which have been prominent in the argument in this case. Instead of 'to take away the superstition,' it reads 'to take away all occasion of dissension and superstition.' In the First Book of *Edward* VI. the direction is different:—'For avoiding all matter and occasion of dissension, it is meet that the bread prepared for the Communion be made through all this realm after one sort or fashion; that is to say, unleavened and round, as it was afore, but without all manner of print, and something more larger and thicker than it was, so that it may be aptly divided in divers pieces; and every one shall be divided in two pieces at the least, or more, by the discretion of the Minister, and so distributed.' One of the *Elizabethan* injunctions (of 1559) is at variance with the *Elizabethan* Rubric continued from the Second Book of King *Edward*, and provides as follows:—'Where, also, it was, in the time of King *Edward* VI., used to have the Sacramental Bread of common fine bread, it is ordered for the more reverence to be given to these holy mysteries, being the Sacraments of the Body and Blood of our Saviour Jesus Christ, that this same Sacramental Bread be made and formed plain, without any figure thereupon, of the same fineness and fashion round, though somewhat bigger in compass and thickness, as the usual bread and wafer heretofore named singing cakes, which served for the use of the private Mass. (*Cardwell*, Doc. Ann., vol. i., p. 202, Ed. 1839.) The learned Judge calls this injunction a *contemporanea expositio* of the Rubric, but it is in fact a superseding of the Rubric, nor can it be regarded as at all reconcileable with it. Upon these facts the learned Judge decides as follows:—'It appears, therefore, that while the first Rubric prescribed an uniformity of size and material, the later and the present Rubric are contented with the order that the purest wheaten flour shall suffice, and the bread may be leavened according to the use of the

1871.

HEBBERT v. PURCHAS. Judgment.

Eastern, or unleavened according to the use of the Western, Church.' (Law Rep., 3 Ad. and Eccl., 103.)

Their Lordships do not find any mention of flour, and, apart from this slight inadvertence, their Lordships are unable to accept this view of the passages that have been quoted. The First Book of *Edward* has in view uniformity of practice, and not the choice of two practices; the bread is to be made 'through all this realm after the same sort and fashion.' The Second Book of *Edward* VI. is not so positive in form, for the words 'it shall suffice' are used; but it produced uniformity, and not diversity, for the injunction of 1559 says: 'It was in the time of King *Edward* VI. used to have the Sacramental Bread of common fine bread.' This general use the injunction proposes to change; but, again, the order is universal, and binds the very minutest details; the bread is to be plain without any figure, fashioned round, but somewhat bigger in compass and thickness than the cakes used in private Masses. There is no trace of an intention to leave men free to follow the fashion of the Eastern, or of the Western Church. So there are three distinct orders; first, for wafer-bread, unleavened as before, but larger, and without print; then for common bread usual at the Table; then for a new kind of bread thicker than the wafer, and without symbolical figures; and the first and last are in their form universal and absolute; and the second also had brought about a general usage, and not a diversity. There was, no doubt, a great division of opinion upon this question, and this makes it all the more remarkable, that none of the three orders takes the natural course of leaving the matter free. Each seems to have aimed at uniformity, but each in a different practice.

Construction of 'it shall suffice.'

But it has been argued by some that the phrase 'it shall suffice,' implies a permission—that the words may mean 'it shall be sufficient, but another usage is allowed, and might even be better.' On the other hand, it has been argued, that in other places in the Liturgy, 'it shall suffice' must be construed into a positive direction; that if 'it shall suffice' to pour water on a sickly child, this ought

1871.

HEBBERT v. PURCHAS. Judgment.

to restrain the Clergyman from immersing a child known to be sickly; that even the weaker form 'it may suffice' in the Rubric, as to children and infants brought to be baptised, conveys to the Minister a distinct direction as to what he is to do, and leaves no alternative course apparent; that 'it shall suffice that the Litany be once read' for both Deacons and Priests is meant to be, and is received as, a positive order; and that in such cases 'it shall suffice' means 'it shall be sufficient for the completeness of a sacrament or for the observance by the Minister of the Rubric.' Their Lordships are disposed to construe this phrase in each case according to the context. Here the expression is 'to take away all occasion of dissension and superstition . . . . it shall suffice.' If these words left the whole matter open, and only provided that the usual bread should be sufficient where it happened to be used, it is difficult to see how either dissension or superstition would be taken away; not dissension, for there would be a license that had not existed since the Reformation; nor superstition, for the old wafer with its 'print,' its 'figures,' which the First Book of *Edward* and the injunctions desired might be excluded, might now be used, if this Rubric were the only restraint. Their Lordships are therefore inclined to think, on this ground alone, that the Rubric contains a positive direction to employ at the Holy Communion the usual bread.

It is at least worthy of notice that when *Cosin* and others, at the last revision, desired to insert words making the wafer also lawful, these words were rejected.

Evidence from history points to wheat-bread.

But their Lordships attach greater weight to the exposition of this Rubric furnished by the history of the question. From a large collection of Visitation Articles, from the time of *Charles* II., it is clear that the best and purest wheat bread was to be provided for the Holy Communion, and no other kind of bread. They believe that from that time till about 1840 the practice of using the usual wheat-bread was universal.

And so does the twentieth Canon.

The words of the 20th Canon, to which the Visitation Articles refer, point the same way. The churchwardens

are bound to supply 'wheaten bread,' and this alone is mentioned. If wafer-bread is equally permitted, or the special cakes of *Edward* VI.'s First Book, and of the injunctions, it is hard to see why the parish is to supply wheaten bread, in cases where wafers are to be supplied by the Minister, or from some other source. And if wafers were to be in use, a general injunction to all churchwardens to supply wheaten bread would be quite inapplicable to all churches where there should be another usage.

Result as to wafer-bread.

Upon the whole, their Lordships think that the law of the Church has directed the use of pure wheat-bread, and they must so advise her Majesty.

Position of consecrating Priest.

It remains to consider part of the 17th Article of Charge, which sets out that the Respondent, during the whole of the Prayer of Consecration at the Holy Communion, 'stood at the middle of that side of the Holy Table which, if the Holy Table stood at the east end of the said Church, or Chapel (the said Table in *St. James' Chapel*, in fact, standing at the west end thereof), would be the west side of such Table, in such wise that you then stood between the people and the said Holy Table, with your back to the people, so that the people could not see you break the bread, or take the cup into your hand.' The learned Judge deals with this charge very briefly, believing it to have been settled by this Committee in the judgment in *Martin* v. *Mackonochie*. He says, 'I must observe that the Rubric does not require that the people should see the breaking of the bread, or the taking of the cup into the Priest's hands; and, if it did so prescribe, the evidence in this case would establish that all the congregation could see him take the cup into his hand, and some of them at least could see him break the bread.' (Law Rep., 3 Ad. and Ecc., 109.) The Rubric on this point is this:—'When the Priest, standing before the table, hath so ordered the bread and wine, that he may with the more readiness and decency break the bread before the people, and take the cup into his hands, he shall say the Prayer of Consecration, as followeth.' Their Lordships are of opinion that these words mean, that the Priest is so to stand that the people present may see him break

Ruling of the Dean of the Arches.

1871.

HEBBERT v. PURCHAS. Judgment.

the bread, and take the cup into his hands; although the learned Judge is right, if he means to say that the mere words do not speak of seeing.

Their Lordships think that the evidence of the witness *Verrall*, which there is no reason to doubt, proves that 'generally the congregation could not see' the breaking of the bread, because the Respondent had his back turned to them. As regards the cup, the witness said that they could see him take the cup into his hand; but, being asked further, he says, 'I could tell he was taking the cup into his hand.' This is consistently explained by supposing that the witness and others could see a certain motion of the Respondent, which, from their knowledge of the service, and from the subsequent elevation, they were sure was the taking of the cup into his hands. It would probably be impossible in any position so to act that all the congregation could see, or that all should be unable to see; but we take it as proved that the greater part of the congregation could not see the breaking of the bread, or the act of taking the cup into the hands.

The facts being established, their Lordships proceed to consider the question itself. In default of argument on the Respondent's side, they have been somewhat aided by a large mass of controversial literature, which shows how much interest this question excites, and which has probably left few of the facts unnoticed.

Position of table.

The Rubric upon the position of the table directs, that it shall 'stand in the body of the church, or in the chancel, where morning and evening prayer are appointed to be said.' This is the same as the Rubrics of 1552, 1559, and 1604, excepting the verbal alteration of 'are' for 'be.' It goes on, 'And the Priest standing at the north side of the table, shall say the Lord's Prayer with the Collect following.' The table is a moveable table. By the Injunctions of Queen *Elizabeth* (*Cardwell*, Doc. Ann. vol. i. p. 201), it is ordered 'that the Holy Table in every church be decently made, and set in the place where the altar stood, and there commonly covered, as thereto belongeth, and as shall be appointed by the Visitors, and so to stand, saving

1871.

HEBBERT v. PURCHAS. Judgment.

when the Communion of the Sacrament is to be distributed; at which time the same shall be so placed in good sort within the chancel, as whereby the Minister may be more conveniently heard of the communicants in his prayer and ministrations, and the communicants also more conveniently, and in more number communicate with the said Minister. And after the Communion is done, from time to time, the same Holy Table to be placed where it stood before.' If this custom still prevailed of bringing the table from the east, and placing it in the chancel, the two Rubrics would present no difficulty. The Priest, standing on the north side as directed by the one, would also be standing before the table, so as to break the bread before the people, and take the cup into his hand as required by the other. No direction was given for a change of position in the Prayer of Consecration in the Second Book of King *Edward* VI., but only a change of posture in the words 'standing up.' But before the time of the Revision of 1662, the custom of placing the table along the east wall was becoming general, and it may fairly be said that the Revisers must have had this in view.

The north side of the table is that which looks to the north.

The following questions appear to require an answer, in order to dispose of this part of the case: What is meant by the 'north side of the table'? What change, if any, is ordered by the Rubric before the Prayer of Consecration? And what is the meaning of 'before the people' in that Rubric?

As to the first question, their Lordships are of opinion that 'north side of the table' means that side which looks towards the north.

They have considered some ingenious arguments intended to prove that 'north side' means that part of the west side that is nearest to the north. One of these is, that the middle of the altar before the Reformation was occupied by a stone or slab, called *mensa consecratoria* and *sigillum altaris*, that the part of the altar north of this was called north side, and that to the south of it was called the south side. Without enquiring whether English altars were generally so constructed, which is, to say the least,

1871.

HEBBERT v. PURCHAS. Judgment.

doubtful, their Lordships observe that in the directions for the substitution of a moveable table for the altar, and for its decent covering, and its position at various times, there is no hint that this is to revive the peculiarity of the altar which it replaced; and they do not believe that the table was so arranged or divided.

Another argument is drawn from the Jewish Ritual. On offering sacrifices before the Lord, the altar was to be sprinkled with the blood, and a red line was drawn across the altar to mark the height at which it should be sprinkled; and it is argued that the line being only in front, the Priest must have stood in front in order to see it, and be guided by it. But on the other hand, the line probably went all round the altar, and the sprinkling was applied to all the sides. And even if the fact was rightly stated, it would be impossible to allow an argument so remote and shadowy to supersede the plain sense of a direction so clear in itself. When the table was placed in the body of the church, or the chancel, the Priest or Minister was to stand on the north side of it, looking south.

Authorities favour this view.

When it became the custom to place the table altarwise against the east wall, the Rubric remained the same. And there are many authorities to show that the position of the Minister was still upon the north side or end, facing south. It is only necessary to cite a few. Archdeacon *Pory* (1662) in his Visitation Articles, says, 'The Minister standing as he is appointed at the north side or end of the table when he celebrates the Holy Communion.' In the dispute between the Vicar of *Grantham* and his parishioners (1627) Bishop *Williams* plainly shows that whichever way the table was to stand, which was the matter in dispute, the position of the Minister was on the north. 'If you mean by altarwise that the table shall stand along close by the wall, so that you be forced to officiate at one end thereof (as you may have observed in great men's chapels), I do not believe that ever the Communion Tables were otherwise than by casualty so placed in country churches.' He also says, 'I conceive the alteration was made in the Rubric to show which way the celebrant was to face.'

1871.

HERBERT v. PURCHAS. Judgment.

Heylin says, quoting the Latin Prayer Book of 1560: 'I presume that no man of reason can deny but that the northern end or side, call it what you will, is *pars septentrionalis*, the northern part.' When Bishop *Wren* was impeached in the House of Lords, A.D., 1636, for consecrating the elements on the west side of the Table, he answered that he stood at the north side at all the rest of the service, except at the Prayer of Consecration. 'He humbly conceiveth it is a plain demonstration that he came to the west side only for the more conveniency of executing his office, and no way at all in any superstition, much less in any imitation of the Romish Priests, for they place themselves there at all the service before, and at all after, with no less strictness than at the time of Consecrating the bread and wine.' *Nicholls*, Commentary on Book of Common Prayer (1710); *Bennett*, Annotations on Book of Common Prayer (1708); *Wheatley*, Rational Illustrations of Common Prayer (1710), confirm the view that when the Table was placed east and west, the Minister's position was still on the north.

Their Lordships entertain no doubt whatever that when the Table was set at the east end the direction to stand at the north side was understood to apply to the north end, and that this was the practice of the Church.

'Before people.'

It will be convenient to consider next what is the meaning of the words 'before the people' in the Rubric, before the Consecration Prayer. *Nicholls* (*opera citata*) observes: 'To say the Consecration Prayer (in the recital of which the bread is broken) standing before the Table, is not to break the bread before the people; for then the people cannot have a view thereof, which our wise reformers, upon very good reasoning, ordered that they should.' That stress was laid on this witness of the people of the act of breaking appears by other passages; for example *Udall* says: 'We press the action of breaking the bread against the Papist. To what end, if not that the beholders might thereby be led unto the breaking of the body of Christ:' Communion Comeliness (1641). *Wheatley* (*opera citata*) says: 'Whilst the Priest is ordering the bread and wine,

1871.

HEBBERT v. PURCHAS.

Judgment.

he is to stand before the Table; but when he says the Prayer, he is to stand so that he may with more readiness and decency break the bread before the people, which must be on the north side. For if he stood before the Table his body would hinder the people from seeing, so that he must not stand there, and consequently he must stand on the north side, there being, in our present Rubric, no other place for the performance of any part of this office.'

To stand with back to people disobeys the Rubric.

Their Lordships consider that the Respondent, in standing with his back to the people, disobeyed the Rubric, in preventing the people from seeing the breaking of the bread.

Does 'standing before the Table' imply a change of position?

The north side being the proper place for the Minister throughout the Communion office, and also whilst he is saying the Prayer of Consecration, the question remains, whether the words 'standing before the Table' direct any temporary change of position in the Minister before saying the Prayer of Consecration? This is not the most important, but it is the most difficult question. Our opinion is that of *Wheatley*, who interprets the Rubric as sending the Priest to the west side of the Table to order the elements, and recalling him for the Prayer itself. This, however, would be needless if the elements were so placed on the Table as that the Priest could 'with readiness and decency,' order them from the north side, as is often done.

It would also be needless in any case where the Communion Table was placed in the body of the church, or in the chancel with its ends east and west. And though this position is not likely now to be adopted, the question is, whether that was the law at the time this Rubric was drawn. Now, the Rubric prescribes that the Table shall stand 'in the body of the church or in the chancel where Morning and Evening Prayers are appointed to be said;' and there are two cases, which occurred in 1633, those of *Crayford* (*Cardwell*, Doc. Ann. vol. ii. p. 226), and *St. Gregory's London* (*Ibid.* ii. p. 237), which show that the Table, though placed at the east end, might be moved for convenience' sake, and under competent authority. This, too, is the view of Bishop *Wren* in 1636, (*Ibid.* ii. p. 252), 'That the

1871.

HERBERT v. PURCHAS. Judgment.

Communion Table in every church do always stand close under the east wall of the chancel, the ends thereof north and south, unless the ordinary give particular directions otherwise.' Should the Table be placed with its ends east and west, it would be absurd to enforce a rule that the Priest should go to the west end to order the elements, seeing the north side would be in every way more convenient.

The Rubric does not insist on a change of position, though directing a change of posture.

Upon these facts their Lordships incline to think that the Rubric was purposely framed so as not to direct or insist on a change of position in the Minister which might be needless; though it does direct a change of posture from kneeling to standing. The words are intended to set the Minister free for the moment, from the general direction to stand at the north side, for the special purpose of ordering the elements; but whether for this purpose he would have to change the side or not is not determined, as it would depend upon the position of the Table in the church or chancel, and on the position in which the elements were placed on the Table at first. They think that the main object of this part of the Rubric is the ordering of the elements; and that the words 'before the Table,' do not necessarily mean 'between the Table and the people,' and are not intended to limit to any side.

'Posture' not 'position' of the Priest the question in *Martin v. Mackonochie.*

The learned Judge in the Court below, in considering the charge against the Respondent that he stood with his back to the people during the Prayer of Consecration, briefly observes, 'the question appears to me to have been settled by the Privy Council in the case of *Martin* v. *Mackonochie.*' The question before their Lordships in that case was as to the posture, and not as to the position of the Minister. The words of the judgment are, 'Their Lordships entertain no doubt on the construction of this Rubric' [before the Prayer of Consecration] 'that the Priest is intended to continue in one posture during the Prayer, and not to change from standing to kneeling, or *vice versâ*; and it appears to them equally certain that the Priest is intended to stand and not to kneel. They think that the words "standing before the Table" apply to the whole sentence; and they

1871.

HEBBERT v. PURCHAS. Judgment.

think this is made more apparent by the consideration that acts are to be done by the Priest before the people, as the Prayer proceeds (such as taking the Paten and Chalice into his hands, breaking the bread, and laying his hand on the various vessels), which could only be done in the attitude of standing.' (*Ante*, p. 118.) This passage refers to posture or attitude from beginning to end, and not to position with reference to the sides of the Table. And it could not be construed to justify Mr. *Purchas* in standing with his back to the people, unless a material addition were made to it. The learned Judge reads it as if it ran, 'They think that the words "standing before the Table," apply to the whole sentence, and that before the Table means between the Table and the people on the west side.' But these last words are mere assumption. The question of position was not before their Lordships; if it had been no doubt the passage would have been conceived differently, and the question of position expressly settled.

Cosin's view upheld.

Upon the whole, then, their Lordships think that the words of Archdeacon, afterwards Bishop, *Cosin* in A.D. 1687, express the state of the Law. 'Doth he (the Minister) stand at the north side of the Table, and perform all things there, but when he hath special cause to remove from it, as in reading and preaching on the Gospel, or in delivering the Sacrament to the communicants, or other occasions of the like nature.' (Bishop *Cosin's* Correspondence, part i. p. 106; *Surtees* Soc. Pub.) They think that the Prayer of Consecration is to be used at the north side of the Table, so that the Minister looks south, whether a broader or a narrower side of the Table be towards the north.

It is mentioned that Mr. *Purchas'* chapel does not stand in the usual position, and that, in fact, he occupied the east side when he stood with his back towards the people. If it had happened, as it does in one of the Chapels Royal, that the north side had been where the west side usually is, a question between the letter and the spirit of the Rubrics would have arisen. But the Respondent seems to us to have departed both from the letter and the spirit of the Rubrics; and our advice to her Majesty will be

that a Monition should issue to him as to this charge also.

As all the charges have been proved against the Respondent, except as to two less important particulars, we direct that he shall pay the costs in this Court, and in the Court below.

Judgment.

Costs.

HENRY HEBBERT . . . . APPELLANT;

AND

THE REV. JOHN PURCHAS . . RESPONDENT.*

(Further Proceedings.)

After judgment had been delivered by the Judicial Committee, but before their report and recommendation had been presented, or any order made thereon by Her Majesty in Council, the Respondent presented two Petitions addressed to Her Majesty in Council, stating that the appeal had been heard *ex parte* by reason of his want of pecuniary means to employ counsel, and his own inability to argue the case; and that (as he alleged) the judgment of the Judicial Committee in the appeal was at variance with former decisions of the Judicial Committee; he prayed for a rehearing of the appeal, and that no report or recommendation might be made thereon to Her Majesty until such rehearing had been had. Both Petitions having been specially referred by Her Majesty to the Judicial Committee, their Lordships, after hearing counsel, declined to entertain the matter of the Petitions, or to allow any doubt to be thrown on the finality of the decisions of the Judicial Committee; and dismissed the Petitions with costs.

March 25, 1871.

BEFORE the report of the opinion and judgment of their Lordships in the above appeal had been presented to Her Majesty in Council, or any Order made in accordance with the advice and recommendation of their Lordships' judg-

* *Present*: The Lord Chancellor (Lord Hatherley); the Bishop of London (Dr. Jackson); Lord Chelmsford; Lord Westbury, Lord Cairns, and Sir James William Colvile.

1871.

HERBERT v. PURCHAS.

Further proceedings.

ment, a Petition, dated March 15, 1871, was presented by the Respondent, addressed to Her Majesty in Council, which stated that the Petitioner was disabled, by want of necessary pecuniary means, from incurring the expense of a defence by counsel, on the hearing such appeal; and that the state of his health, and his own incompetency to cope with counsel, prevented him from venturing personally to undertake to sustain the judgment of the Dean of the Arches; that the appeal was thus heard without any opposing arguments on the various important points raised; and, therefore, that the report of the Judicial Committee on those important points, from the necessity of the case, must be submitted to Her Majesty upon an *ex parte* hearing only. That, as he stated, the result of these circumstances was, that the opinion of the Judicial Committee had been pronounced, with regard to the main particulars, in favour of the Appellant, in contradiction, as he, the Petitioner, was advised, in one essential point, to the decision of the Judicial Committee in the case of *Westerton* v. *Liddell.* That so grave were the consequences of the decision in the case to which the Petitioner was a party, and so deep and painful an interest had, as he submitted, it excited amongst a very large body of clergy and laity of the Church of *England*, that, being now unexpectedly enabled to take upon himself the expense of employing counsel on his behalf, which at the time of the hearing he was unable to do, and being, as he alleged, most anxious for the sake of himself and others that a full and complete discussion should be had of the several points raised by the appeal, he prayed that Her Majesty would not adopt the recommendation of the Lords of the Judicial Committee in the case, until an opportunity had been afforded to the Petitioner of having the case reheard, in order that he might be duly represented by counsel upon such rehearing, and a full and satisfactory discussion might be had on the several points raised by the appeal.

On March 17, 1871, an appearance for the first time was entered on behalf of the Respondent, in Her Majesty's Court of Appeal, in the original appeal.

1871.

HEBBERT v. PURCHAS. Further proceedings.

This Petition having been set down for hearing before the Judicial Committee, notice was issued from the Privy Council Office for the Petitioner to appear before the Committee, as upon the hearing of an ordinary petition.

The *Solicitor-General* (Sir *John D. Coleridge*, Q.C.), with whom was Mr. *C. Bowen*, on behalf of the Petitioner,

Took a preliminary objection to the competency of the Court to entertain the Petition. He submitted that the Petition was not a Petition in the appeal addressed to the Judicial Committee, but a Petition for a rehearing addressed to the Queen in Council, and that unless such Petition was referred by Her Majesty to their Lordships by a special Order in Council, in accordance with the provisions of the Judicial Committee Act, 3 and 4 *Will.* IV., c. 41, sec. 4., the Judicial Committee, being only a Statutory Court, had no authority, and that the case was, in fact, as regarded the Tribunal then sitting, *coram non judice*. He submitted that the Petition being addressed to the Queen in Council, was not a proceeding in the appeal then lately before the Judicial Committee, so as to bring it within the provisions of the Statute, 7 and 8 *Vict.*, c. 69, s. 9, and obviate a special reference; that the Petition for a rehearing having been presented to Her Majesty in Council, involved an appeal, not to the Judicial Committee against their own report or judgment, but to the discretion and prerogative of the Crown. He further submitted that Her Majesty, if so advised, might refer the Petition to this or any other section of the Judicial Committee, but until such reference had been specially made, the Judicial Committee could have authority to proceed, or take cognisance of the matter of the Petition, and advise Her Majesty, under the circumstances, that a further hearing ought or ought not to take place.

The LORD CHANCELLOR intimated the opinion of their Lordships, that, as it was insisted there was no Petition

for a rehearing before them, it was unnecessary further to discuss the matter.

1871.

HEBBERT v. PURCHAS.

Further proceedings.

On March 29, 1871, Mr. *Purchas* presented another Petition to Her Majesty in Council, in which he stated, in effect, that he had, at the hearing of the last Petition, for the first time discovered that no special Order had been made by Her Majesty referring his Petition for a rehearing of his original appeal to the Judicial Committee; that he was advised by counsel, that to proceed with any motion before the Judicial Committee until a special Order of reference had been made by Her Majesty in Council in the matter of his Petition, might be to his prejudice; that accordingly no motion for a rehearing was made on the day named in the aforesaid notice, the Petitioner's counsel informing their Lordships of the reasons why it was thought necessary to abstain from any such motion; and the Petitioner urged in favour of the rehearing of his case the grounds before stated by him; and further, that if the draft report or recommendation, as delivered and proposed by the Committee, were made and adopted by Her Majesty, the Petitioner would be condemned in a criminal suit with heavy costs for doing what, he was prepared to submit, was not illegal; and he prayed, in effect, that the appeal of *Hebbert* v. *Purchas* might be reheard before the Judicial Committee, and that until such rehearing had been had, their Lordships might abstain from making to Her Majesty any report or recommendation in the matter of the appeal, or any report thereof be received or adopted by Her Majesty; and that he might be heard by counsel upon the matter of both Petitions presented by him.

This Petition, together with the former one of March 15, 1871, having been specially referred by Her Majesty to the Judicial Committee to report thereon, now came on for hearing.*

April 26, 1871.

* *Present*: The Lord Chancellor (Lord Hatherley); the Archbishop of York (Dr. Thomson); the Bishop of London (Dr. Jackson); Lord Chelmsford, Lord Westbury, Lord Cairns, Sir James William Colvile, the Lord Justice James, and the Lord Justice Mellish.

1871.

HEBBERT v. PURCHAS.

Further proceedings.

The *Solicitor-General* (Sir *John D. Coleridge*, Q.C.), and Mr. *C. Bowen*, in support of the application.

The opinion and judgment of the Judicial Committee on an appeal referred to them is not necessarily a final judgment; it is competent, we apprehend, to the Committee to reconsider the case, especially when no report or recommendation has been made thereon to Her Majesty in Council. The Judicial Committee is constituted, and its jurisdiction defined, by Statute, 3 and 4 *Will.* IV., c. 41, which limits the power of the Committee simply to advising the Crown. By the 2 and 3 *Will.* IV., c. 92, s. 2, the High Court of Delegates was abolished and its powers transferred to the Queen in Council. The 3rd section declares, 'that every judgment, order, and decree to be made by the King's Majesty, his heirs and successors, shall have such and the like force and effect in all respects whatsoever as the same respectively would have had if made and pronounced by the High Court of Delegates; and that every such judgment, order, and decree shall be final and definitive, and no Commission shall thereafter be granted or authorised to review any judgment or decree to be made by virtue of that Act.' That Statute, and the Privy Council Act, 3 and 4 *Will.* IV., c. 41, are *in pari materiâ*, and to be taken in relation with the Statutes for restraint of appeals, 24 *Hen.* VIII., c. 12, and 25 *Hen.* VIII., c. 19, ss. 1, 2, 3. The Statutes, 24 *Hen.* VIII., c. 12, and 25 *Hen.* VIII., c. 19, were, in part, repealed by the 1 and 2 *P.* and *M.*, c. 8, s. 11, but the subsequent Statute, 8 *Eliz.*, c. 5, 'For avoiding tedious suits in civil and marine causes,' enacts, 'that all and every such judgment and sentence definitive as shall be given or pronounced by any Civil or Maritime Court upon appeal lawfully to be made thereon to the Queen's Majesty in Her Highness' Court of Chancery, by such Commissioners or Delegates, shall be final, and no further to be had or made from the said judgment or sentence definitive, or from the said Commissioners or Delegates, for or in the same; any law, usage, or custom to the contrary notwithstanding.'

1871.

HEBBERT v. PURCHAS.

Further proceedings.

Although it declared that the sentence of the High Court of Delegates is definitive, yet it is laid down by *Coke*, 4th Inst., 135, and *Bla.* Com., vol. iii., p. 67, that the Crown may grant a Commission of Review notwithstanding the Statutes, 25 *Hen.* VIII., c. 19, and 8 *Eliz.*, c. 5, declare the sentence of the Court of Delegates is to be final. The practice of granting a Commission of Review was uniform till the abolition by 2 and 3 *Will.* IV., c. 92, of the High Court of Delegates. The necessity for a Commission of Adjuncts only arose when the Court of Delegates were equally divided in opinion: Rep. on the Prac. and Jur. of the Ecc. Courts, 1832, p. 21. As neither the Statutes, 3 and 4 *Will.* IV., c. 41, 3 and 4 *Vict.*, c. 86, and 6 and 7 *Vict.*, c. 38, affected the prerogative of the Crown, we submit, that the same prerogative and power to issue a Commission of Review of a judgment of the Judicial Committee exist now in the Crown as it had before the Statute, 2 and 3 *Will.* IV., c. 92, from the sentence of the High Court of Delegates, and that the Statute, 3 and 4 *Will.* IV., c. 41, enables Her Majesty to refer this case to the same Committee, or, if need be, to a new Committee. [Lord CAIRNS: That proposition involves this consequence, that the Judicial Committee would have three functions to discharge—to advise the Sovereign; to advise whether Her Majesty in Council should send its recommendation back for reconsideration; and then, if it so advised, to again advise Her Majesty in Council after reconsideration.] A rehearing, even after an Order in Council confirming the report of the Judicial Committee, has been allowed. In this case we urge, and are prepared to argue, that conflicting judgments bearing on the subjects at issue have been pronounced by former members of this Tribunal, as in *Westerton* v. *Liddell*, and *Martin* v. *Mackonochie*. On these grounds, and also as the hearing of the case was *ex parte*, we submit that a rehearing ought to be allowed on the grounds—first, that the decisions are conflicting; secondly, that the case was heard *ex parte*, as the Petitioner did not appear at the hearing for want of funds; and, lastly, on public expediency, as the conscience of a large

1871.

HEBBERT v. PURCHAS.

Further proceedings.

number of the Clergy of the Church of *England* was unsettled by the decision. If no rehearing is possible, the decision will be final, unless set aside by Act of Parliament.

Mr. *A. J. Stephens*, Q.C., and Mr. *T. D. Archibald*, for the Appellant, *contra*:—

The Statute, 2 and 3 *Will.* IV., c. 92, sec. 2, transferred the powers of the High Court of Delegates to the Queen in Council, and also abolished the Commission of Review. In the Report of the Ecclesiastical Commissioners of 1832, p. 20, it is expressly stated, that from the decision of the High Court of Delegates no further appeal lies as a matter of right, and that although the unsuccessful party might present a petition to His Majesty in Council for a Commission of Review, yet that it was very rarely that the facts of a case warranted the exercise of the royal prerogative. By the Statute, 3 and 4 *Will.* IV., c. 41, this Tribunal is constituted the ultimate Court of Appeal in ecclesiastical causes, having the same authority and jurisdiction as was possessed by the Court of Delegates, except the power of granting a Commission of Review, which is expressly taken away by 2 and 3 *Will.* IV., c. 92, sec. 3. The object of these Petitions is to resuscitate the old Commission of Review, which proved so pernicious in its working and results as to lead to its positive abolition by Statute. The Judicial Committee is, by Statute, a Court of Law fully constituted, and capable of enforcing an Order in Council made on an appeal, and punishing for contempt. Even if a rehearing was granted, and judgment given in favour of the Petitioner, the inevitable consequence would be that the Appellant would then have a right to present a Petition to the Queen in Council urging that conflicting judgments had been given, and, therefore, that it was necessary to rehear the case again. To allow a rehearin of a judgment of the Appellate Court upon a question of Church doctrine solemnly decided, would be most mischievous. The judgment is in conformity with the prin-

ciples laid down in *Westerton* v. *Liddell* and *Martin* v. *Mackonochie*.

The *Solicitor-General* replied.

The LORD CHANCELLOR:—

Their Lordships are of opinion, in respect of the two Petitions addressed to the Crown, that no further proceedings should be taken therein. Having carefully weighed the arguments, and considering the great public mischief which would arise on any doubt being thrown on the finality of the decisions of the Judicial Committee, their Lordships are of opinion, that expediency requires that the prayer of the Petitions should not be acceded to, and that they should be refused with costs.

Three separate Orders were made by Her Majesty in Council on May 16, 1871, upon the Appeal and the two Petitions.

The Order in Council made on the first and principal Appeal set forth, that their Lordships had 'agreed humbly to report to Her Majesty their opinion in favour of the said Appeal; that the Decree or Order appealed from ought to be amended to the extent thereinafter mentioned; that the principal cause ought to be retained, and therein that, in addition to the matters in respect of which the said *John Purchas* was by the Decree appealed from pronounced to have offended, and from the use of or sanctioning the use of which he was thereby admonished to abstain, he, the said *John Purchas*, ought to be pronounced to have offended against the Statute Law and the Constitutions and Canons Ecclesiastical of the realm by himself using and wearing a Vestment called a *Chasuble* while officiating in the Communion Service, and in the administration of the Holy Communion in the said church or chapel of *St. James*, at *Brighton*; and by sanctioning and authorising, whilst present, and responsible for the due performance of Divine Service, the wearing of a *Chasuble* by other Clergymen whilst officiating in the Communion Service, and in the administration of the Holy Communion in the said

1871.

HEBBERT v. PURCHAS. Further proceedings.

church or chapel; and by himself wearing, when officiating in the Communion Service, a Vestment called an *Alb*, and by causing or suffering other Clergy officiating or assisting at the Communion Service, in his presence, to wear certain Vestments called *Tunics*, *Tunicles*, and *Albs*; and by administering wine mixed with water, instead of wine, to the communicants at the Lord's Supper; and by the use in the said church or chapel, in the administration of the Holy Communion, of wafer-bread instead of bread such as is usual to be eaten; and by standing in the said church or chapel with his back to the people, between the people and the Holy Table, whilst reading the Prayer of Consecration in the Holy Communion; and that he, the said *John Purchas*, ought to be admonished to abstain from the use of, or sanctioning the use of, the rites, ceremonies, acts, observances, matters or things, as well those in which he has been pronounced by the aforesaid Decree of the Court below to have offended, as those in which their Lordships did report that he had also offended; and that a Monition admonishing him accordingly ought to be issued out of the Seal of Her Majesty in ecclesiastical and maritime causes; and further, that he, the said *John Purchas*, ought to be condemned in all the costs incurred in the said cause in the Court below on behalf of the said *Charles James Elphinstone*, and also in the costs incurred in the said appeal on his behalf, and on behalf of the said *Henry Hebbert*, save those incurred in the application of the said *Henry Hebbert* to be admitted and substituted as Promoter in the said appeal, in respect of which no Order was made.'

By the Order in Council made on the two Petitions of rehearing, it was ordered, 'that the Petition of the said *John Purchas* ought not to be granted, and that no further steps ought to be taken in regard thereto.'

THOMAS BYARD SHEPPARD . APPELLANT;

AND

REV. WILLIAM JAMES EARLY BENNETT, CLERK . . . . } RESPONDENT.*

On Appeal from the Arches Court of Canterbury.

Changes in the Book of Common Prayer by which words or passages, inculcating particular doctrines, or assuming a belief in them, have been struck out, are most material as evidence that the Church has deliberately ceased to affirm those doctrines in her public services. The necessary effect of such changes, when they stand alone, is that it ceases to be unlawful to contradict such doctrines, and not that it becomes unlawful to maintain them.

The Church of *England* holds and teaches affirmatively a presence of Christ in the ordinance of the Lord's Supper to the soul of the worthy recipient. As to the mode of this presence, nothing is affirmed. To maintain a presence which is 'real, actual, and objective'—a presence upon the altar, under the form of bread and wine, though such a presence is not affirmed, or required by the Articles and Formularies—is not so contradictory or repugnant to them as to be properly made the ground of a criminal charge: and the assertion of a real, actual, and objective presence of the Body and Blood of Christ in the Sacrament, after a heavenly and spiritual manner, does not expressly, or by necessary implication, assert a presence other than spiritual; nor is such assertion necessarily contra-

* *Present*: The Lord Chancellor (Hatherley); the Archbishop of York (Dr. Thomson); the Bishop of London (Dr. Jackson); Lord Romilly, M. R.; Sir James W. Colvile; Sir Joseph Napier, Bart.; Sir W. M. James, L. J.; Sir George Mellish, L. J.; Sir Montague Smith; Mr. Montague Bernard.

dictory of the 28th, and 29th Articles of Religion, or of the Declaration of Kneeling.

The words 'corporal presence' of the Black Rubric of 1662 cannot be regarded as a mere equivalent for the words 'real and essential presence' of King *Edward's* Second Book.

It is not lawful for a Clergyman to contradict, expressly or by inference, the proposition laid down in the 31st Article of Religion, 'that the offering of Christ once made is that perfect redemption, propitiation, and satisfaction for all the sins of the whole world, both original and actual,' and 'that there is none other satisfaction for sin but that alone;' nor to contradict any proposition plainly deducible from the condemnation of propitiatory masses, which forms the second part of the 31st Article of Religion.

It is not lawful for a Clergyman to teach that the sacrifice, or offering of Christ upon the Cross, or the redemption, propitiation, or satisfaction wrought by it, is, or can be, repeated in the ordinance of the Lord's Supper; nor that in that ordinance there is or can be any sacrifice or offering of Christ which is efficacious in the sense in which Christ's death is efficacious to procure the remission of the guilt or punishment of sins.

It was maintained by a Clerk in Holy Orders that the Communion Table is an altar of sacrifice, at which the Priest appears in a sacerdotal position at the celebration of the Holy Communion, and that at such celebration there is a great sacrifice or offering of our Lord by the ministering Priest, in which the mediation of our Lord ascends from the altar to plead for the souls of men: *Held*, that it was not clear that the word 'sacrifice,' as used, contradicted the language of the Articles.

It is unlawful to teach or maintain that adoration is due to the Consecrated Elements, or to any corporal presence of Christ therein.

It was maintained by a Clerk in Holy Orders that adoration is due to Christ present upon the altars (thereby referring to the Communion Tables) in the Sacrament of the Holy Communion, under the form of bread and wine, on the ground that under their veil is the sacred Body and Blood of our Lord and Saviour Jesus Christ: *Held*, that such expressions, though

rash, ill-judged, and perilously near a violation of the law, are not so inconsistent with the Declaration of Kneeling, and the Articles of Religion, as to afford grounds for *penal* proceedings, and that the Clerk was entitled to the benefit of the doubt.

It is not the part of the Court of Arches, or of the Judicial Committee, to usurp the functions of a synod or council. Their duty is to ascertain whether statements are so repugnant to the Articles and Formularies construed in their plain meaning as to merit judicial condemnation.

Authorities are only valuable as illustrating the liberty left by the Articles and Formularies, and actually enjoyed by the members and Ministers of the Church.

The cases of *Gorham* v. Bishop of *Exeter*, *Liddell* v. *Westerton*, and *Martin* v. *Mackonochie*, referred to, and affirmed.

Nov. 28, 30; Dec. 1, 2, 1871.

SHEPPARD v. BENNETT.

Statement.

THIS was an Appeal from the final sentence or decree pronounced by the Dean of the Arches Court of *Canterbury*, on July 23, 1870, in a cause of the office of the Judge, promoted by *Thomas B. Sheppard*, against the Rev. *William James Early Bennett*, Vicar of the parish of *Frome Selwood*, in the diocese of *Bath* and *Wells*, for having offended against the laws ecclesiastical by having within two years from the date of the institution of the cause, caused to be printed and published certain works in which he is alleged to have advisedly maintained doctrines directly contrary or repugnant to the Articles and Formularies of the United Church of *England* and *Ireland*, in relation to the Sacrament of the Lord's Supper.

The cause was instituted in the Arches Court of *Canterbury*, by virtue of Letters of Request of the late Lord Bishop of *Bath* and *Wells*, in accordance with the provisions of the Act 3rd and 4th *Vic.*, c. 86.

The admission of the Articles in the Court below (the Court of the Arches) was moved on October 26, 1869, and on the 30th of the same month Sir *R. J. Phillimore* decided that certain passages in the Articles were inadmissible, and directed the Articles to be reformed.

1871.

SHEPPARD v. BENNETT.

Statement.

Against this decision the Promoter appealed to the Judicial Committee, who, on March, 26, 1870, affirmed the decision.

The cause was remitted to the Arches Court, and the Articles were reformed by Sir *R. J. Phillimore*, counsel for the Promoter, objecting to the reformation as being at variance with the reformation directed by the order of October 30, 1869.

On June 16, 1870, the cause came on for hearing, and counsel for the Promoter applied that certain passages struck out by the Judge in his reformation of the Articles, on June 3, might be reinstated. No order, however, was made on the application. On July 23, 1870, Sir *R. J. Phillimore* pronounced his decree that the Proctor for the Appellant had failed in proving the Articles, and dismissed the Respondent from the suit.

The present Appeal was from so much of the interlocutory decree of June 3, 1870, as directed the passages in the 5th, 6th, 7th, and 32nd Articles to be struck out; also from the interlocutory decree of June 16, 1870, whereby in effect the Judge declined to allow such passages to be reinstated, and from the final sentence of July 23, 1870.

The Articles as reformed.

The following are the material parts of the reformed Articles:—

3. That you, the said Respondent, have, within two years last past, written and published, in a book entitled 'The Church and the World,' a certain article, entitled 'Some Results of the Tractarian Movement of 1833.'

4. That you, the said Respondent, have, within two years last past, written a certain letter, entitled 'A Plea for Toleration in the Church of *England*, to the Rev. *E. B. Pusey*, D.D.,' 2nd edition; also a certain letter to the same, and similarly entitled, 3rd edition.

5. That in the said article, entitled 'Some Results of the Tractarian Movement of 1833,' are contained the following passages, that is to say:—

1871.

SHEPPARD v. BENNETT. Statement.

Extracts from 'Results of the Tractarian Movement of 1833.'

At page 10:—

(B) '*The Doctrine of the Holy Eucharist.*—Two questions are here involved, the doctrine of sacrifice and of the real presence. Dr. *Newman* tells us, in his "*Apologia*," "When a correspondent, in good faith, wrote to a newspaper to say that the sacrifice of the Holy Eucharist spoken of in the tract, was a false print for Sacrament, I thought the mistake too pleasant to be corrected before I was asked about it." This may be a fair representation of the doctrine held by the general average of the Bishops and Clergy at that time; and of course, therefore, in *the world* any idea of a sacrifice in the Blessed Eucharist would have been a chimera. An act of memorial—an agape or love feast, a solemn record of Jesus' passion and death—that would have been the sum total of the general idea of the Holy Eucharist in those days.'

At pages 11 and 12:—

(C) 'When Dr. *Pusey*, in 1843, put forth his remarkable sermon, entitled "Holy Communion: a Comfort for the Penitent," that world was startled. Yes, and much more than the world; the learned University was startled. The sermon stated, "The same reality of the Divine gift makes it angel's food to the saint and a ransom to the sinner. And both because it is the Body and Blood of Christ. Were it *only* a thankful commemoration of His redeeming love, or *only* a showing forth of His death, or *only* a strengthening and refreshing of the soul, it were indeed a reasonable service, but it could have no direct healing to the sinner. To him its special joy is, that it is His Redeemer's very broken Body; it is His blood which was shed for the remission of his sins. In the words of the ancient Church, 'he drinks his ransom,' 'he eateth the very Body and Blood of the Lord, the only sacrifice for sin.' God poureth out for him 'the most precious Blood of His only begotten; they are fed from the Cross of the Lord,' 'because they eat His Body and Blood.'" For this doctrine, this holy comforting doctrine, this true catholic doctrine—who would believe it now?—our dear friend was absolutely condemned

1871.

SHEPPARD v. BENNETT. Statement.

by the University of *Oxford* and suspended for two years. But patience! The learned University of *Oxford* had to learn as well as the rest of the world; it condemned because it was ignorant. Time advanced; the same Doctor preached again when his suspension was over, and reiterated the condemned doctrine. Ten years had passed, and the same sermon was continued as though nothing had intervened, and *then* the doctrine was received. How dignified, how grand, how noble was that patient waiting for the teaching of time! The second sermon is entitled "The Presence of Christ in the Holy Eucharist." The sermon states: "The presence of which our Lord speaks has been termed sacramental, supernatural, mystical, ineffable, opposed not to what is real but to what is natural. It is a presence without us, not within us only: a presence by virtue of our Lord's words, although to us it becomes a saving presence, received to our salvation through our faith. . . . . The word body is no figure. For our Lord says, 'This is my body;' and not so only, but 'This is my body, which was given for you.' Since, then, it was His true Body which was given *for* us on the Cross, it is His true Body which is given *to* us in the Sacrament. The manner of the presence of the Body is different. The Body which is present is the same; for He has said, 'This is my body, which is given for you.'"'

Extracts from 'Results of the Tractarian Movement of 1833.'

At pages 12 and 13:—

(D) 'The Priest or Priest and deacon, formerly standing with faces opposite each other, and leaning over the altar in apparently amicable conference, now appear in their sacerdotal position, as though they were in reality occupied in the great sacrifice which it is their office to offer. Formerly, an ordinary surplice, and frequently not over clean or seemly, covered the person of the ministering Priest, no difference being manifested between that and all other offerings of prayer; now the ancient vestments present to crowds of worshippers the fact, that here before God's altar is something far higher, far more awful, more mysterious, than aught that man can speak of; namely, the presence of the Son of God in human flesh subsisting.

1871.

SHEPPARD v. BENNETT. Statement.

And towards this are tending all the ancient rites of the Church which are now in course of restoration. The solemn music and the smoke of the incense go up before God, assuring the world that here is no appearance only of love, but a reality and a depth which human hearts cannot fathom, nor even the angels themselves. The incense is the mediation of Jesus ascending from the altar to plead for the sins of man.'

6. That in the said letter, entitled 'A Plea for Toleration in the Church of *England*,' 2nd edition, referred to in the fourth preceding Article, are contained in the following passages, that is to say:—

At pages 2 and 3:—

Extracts from 'A Plea for Toleration, 2nd edition

(E) 'The greater part of the priesthood does now maintain and set forth without flinching those doctrines which were then (that is, in the year 1830), to say the least, held in abeyance. To speak only of myself, I have worked steadily onward as far as my humble powers have enabled me, cheered and instructed by the "Tracts for the Times," and your own (Dr. *Pusey's*) more special teaching in *Oxford*, to "contend earnestly for the faith once delivered unto the saints"—that faith seeming to me to derive its whole efficacy from a right appreciation primarily of the doctrine of the Incarnation, and depending on that, the real, actual, and visible presence of our Lord upon the altars of our churches. Without that doctrine, as containing and inferring the sacerdotal office of the Priest and the sacrificial character of the altar, there would seem to me no church at all. It could not but be that somehow the words of our blessed Lord must be true—"Except ye eat the flesh of the Son of man, and drink His blood, ye have no life in you."'

At pages 4 and 5:—

(F) 'In proportion as the doctrines of the Real Presence and Eucharistic Sacrifice have found their way into the faith of congregations, so have ceremonial observances increased, and have become more and more acceptable. That which I taught first in 1842 I have naturally followed up when the opportunity came; and it is now my happiness

1871.

SHEPPARD v. BENNETT. Statement.

to say that I have been enabled, with God's blessing, to realise many things in the dignified observance of the blessed Sacrament which I then only dreamed of as possible. I have been enabled to revive the ancient Catholic vestments, and to use, together with them, many beautiful ceremonies, which, though of late years fallen into desuetude, always formed a part of the service of the Eucharist in olden times.'

At page 5:—

(G) 'Our eucharistic office, instead of being, as in too many instances it used to be, mutilated and curtailed of its fair proportions, and very often a mere dead piece of formalism, has become a living, real, spiritual offering of Jesus Christ upon the altar.'

At page 14:—

Extracts from 'A Plea for Toleration,' 2nd edition.

(H) 'Well, I do not know what others of my brethren in the priesthood may think—I do not wish to compromise them by anything I say or do—but seeing that I am one of those who burn lighted candles at the altar in the day time; who use incense at the Holy Sacrifice; who use eucharistic vestments; who elevate the Blessed Sacrament; who myself adore and teach the people to adore the Consecrated Elements, believing Christ to be in them, believing that under their veil is the sacred Body and Blood of my Lord and Saviour Jesus Christ; seeing all this, it may be conceived that I cannot rest very much at ease under the imputation above recited.'

At page 15:—

(I) 'Is it really the case that the Church of *Rome* is the only Communion in which men may hold the doctrines of the Real Presence and the Eucharistic Sacrifice, and be in proportion reverential in their devotions and adore God in that blessed offering? Is the Church of *England* to stand aloof and be singular in the aspect of a dead intellectual monotony, excluding all that has faith, passion, love, or feeling in her devotions?'

At page 63:—

(K) 'It is not for a chasuble or a cope, lighted tapers or the smoke of incense, the mitre or the pastoral staff, that

1871.

SHEPPARD v. BENNETT. Statement.

we are contending, but, as all those who think deeply on either side of the question know full well, for the doctrines which lie hidden under them. No one of the commonest capacity would either undergo the trouble or encounter the expense which is unavoidably connected with the proper observance of religious ceremonies, if it were only for the external show which was to be gained in them.'

At pages 63, 64, and 65:—

(L) 'The Church of *England*, as all catholic churches, is agreed upon this, and therefore the Bishop of *London*, though he may not be so just, is still in his generation the wiser (if he desire at once to go to the root of the matter) not to heed the ritual, but plunge at once into the doctrine. Let us ascertain, then, what the doctrine is which is brought into question. It is threefold—1. The real objective presence of our blessed Lord. 2. The sacrifice offered by the Priest; and, 3. The adoration due to the presence of our blessed Lord in the Holy Eucharist. Here it is that the Bishop of *London* fastens upon us without mercy. There is no subterfuge or circumlocution in him (for which I honour him). We are guilty, in his opinion, of holding and teaching false doctrine, and he says so. But, with all due deference to him, it does not follow that because he condemns us of false doctrine therefore we are guilty. As it always was, so it is now in the Church of Christ. We have an appeal; a Bishop may be himself heretical in charging others with heresy. Church history furnishes abundance of examples. St. *Athanasius* came forth victorious in the truth, though *Arius* had the upper hand by law and by force for many years. And in this particular question it may be asked of him, why it is that now, after so many trials, the doctrines of the Holy Eucharist are again set forth as matters of agitation, and those who hold the catholic faith denounced afresh, as though they held something new and strange, when everyone knows they have been determined by the Church long ago. It is not as if these doctrines now appeared for the first time in Church history. They are the first principles of the oracles of God, and it seems hard to be thus compelled to

Extracts from 'A Plea for Toleration, 2nd edition.

1871.

SHEPPARD v. BENNETT. Statement.

lay their foundation over and over again. You yourself (Dr. *Pusey*), my dear friend, have in these latter days made them amply known, and have claimed them as the indisputable heritage of the Church. When, first, in the "Tracts for the Times," and then in your University and other sermons, you were challenged by the world, you proved them to be our doctrine. When you preached, in 1843, on "Comfort to the Penitent in the Holy Eucharist," you were suspended by the University. When you preached the same doctrine, only much more strongly, in 1853, the University, by its then silence, showed that it was able to accept what you taught, and there was no more question concerning it; ten years had cleared away the misunderstanding of your first statement, and the Church dwelt confidently in the strength of her faith, now no longer gainsaid.'

7. That in the said letter, entitled 'A Plea for Toleration in the Church of *England*,' 3rd edition, are contained the following passages, that is to say:—

Extracts from 'A Plea for Toleration,' 3rd edition.

At pages 3 and 4 of the preface:—

(N) 'I therefore send forth this third edition with as little comment as possible, and in precisely the same language as that which was used in the first and second editions, save and except the two passages referred to, omitting also the postscript, which, by the events in the Church which have occurred in the interval, has now no bearing on the subject. The reader will observe that in the two first editions, at page 3, the words were, "the real, actual, and visible presence of our Lord upon the altars of our churches." In the present edition he will find, at page 2, the following words substituted: "the real and actual presence of our Lord under the form of bread and wine upon the altars of our churches." He will also observe that at page 14, in the former editions, the words were, "who myself adore and teach the people to adore the Consecrated Elements, believing Christ to be in them—believing that under their veil is the sacred Body and Blood of

1871.

SHEPPARD v. BENNETT. Statement.

my Lord and Saviour Jesus Christ." He will now find the following words substituted: "who myself adore and teach the people to adore Christ present in the Sacrament, under the form of bread and wine, believing that under their veil is the sacred Body and Blood of my Lord and Saviour Jesus Christ." My meaning, and that which passed through my mind in writing the original passages, was precisely the same as that which is now conveyed in the words substituted; but as the original words were liable to a different construction from that in which I used them, I therefore most willingly in this edition adopt another formula to express my meaning. The formula now adopted, and which, without any doubt, will convey the doctrine of the Real Presence, as the Church would teach it, has been suggested to me by him whose name stands at the head of this pamphlet (Dr. *Pusey*); one to whom the whole Church would implicitly bow, and all revere. I have no hesitation in adopting his words as my own, fully and completely, and on this basis am ready with him patiently to contend for the faith once delivered to the saints, and, if need be, gladly to suffer.'

At page 6 of the said preface—

Extracts from 'A Plea for Toleration,' 3rd edition.

(O) 'The three great doctrines on which the Catholic Church has to take her stand are these:—1. The real objective presence of our blessed Lord in the Eucharist. 2. The sacrifice offered by the Priest; and, 3. The adoration due to the presence of our blessed Lord therein.'

At page 2 of the said book—

(P) 'The greater part of the Priesthood does now maintain and set forth, without flinching, those doctrines which were then, to say the least, held in abeyance. To speak only of myself, I have worked steadily onwards, as far as my humble powers have enabled me, cheered and instructed by the "Tracts for the Times," and your own more special teaching in Oxford, "to contend earnestly for the faith once delivered to the saints;" that faith seeming to me to derive its whole efficacy from a right appreciation primarily of the doctrine of the Incarnation, and depending on that, the *real and actual presence of our Lord, under the form of*

1871.

SHEPPARD v. BENNETT.

Statement.

*bread and wine upon the altars of our churches.** Without that doctrine as containing and inferring the sacerdotal office of the Priest, and the sacrificial character of the altar, there would seem to me no church at all. It could not be but that somehow the words of our blessed Lord must be true: "Except ye eat the flesh of the Son of Man, and drink His blood, ye have no life in you." '

At pages 3 and 4:—

(Q) (R) Copies of the passages set out in the 6th Article, lettered F and G.

At page 11:—

(S) 'Well, I do not know what others of my brethren in the Priesthood may think. I do not wish to compromise them by anything I say or do. But seeing that I am one of those who burn lighted candles at the altar in the daytime; who use incense at the Holy Sacrifice; who use the eucharistic vestments; who elevate the Blessed Sacrament; *who myself adore, and teach the people to adore, Christ present in the Sacrament, under the form of bread and wine,*† believing that under their veil is the sacred Body and Blood of my Lord and Saviour Jesus Christ; seeing all this, it may be conceived that I cannot rest very much at ease under the imputation above recited.'

At pages 12, 49, 50, and 51:—

(T) (U) (V) Copies of the passages set out in the 6th Article, lettered I, K, L.

Formal charges of Appellant as to passages set out in 5th preceding Article.

8. That in the passages set forth in the fifth preceding Article you have maintained the doctrine that in the Sacrament of the Lord's Supper there is an actual presence of the Body and Blood of our Lord in the consecrated bread and wine.

9. That in said passages you have maintained that there

* By reference to the 6th Article, letter E, it will be seen that the words in the 2nd edition were, 'real, actual, and *visible* presence of our Lord upon the altars of our churches.'

† By reference to the 6th Article, letter H, it will be seen that the words in the 2nd edition were, 'who myself adore, and teach the people to adore, the Consecrated Elements, believing Christ to be in them.'

1871.

SHEPPARD v. BENNETT. Statement.

is an actual presence of the true Body and Blood of our Lord in the sacramental bread and wine, without or external to the communicant, by virtue of, upon, or after the consecration of the same, irrespectively of the faith and worthiness of the communicant, so as to be received by all communicants irrespectively of their faith and worthiness.

10. That in the said passages you have maintained that there is an actual presence of the true Body and Blood of our Lord in the consecrated bread and wine, without or external to the communicants, prior to and separate from the act of reception by the communicants.

11. That in the said passages you have maintained that in the Holy Communion the natural Body and Blood of our Saviour Christ are not only in heaven but here; to wit, upon or before the altars (thereby referring to the Communion Tables) of the churches, under the form of bread and wine.

13. That in the said passages you have maintained that the Holy Communion Table is an altar of sacrifice, at which the ministering Priests of the said church appear in a sacerdotal position at the celebration of the Holy Communion, and that at such celebration there is a great sacrifice or offering of Jesus Christ by the ministering Priest; and that in such sacrifice or offering the mediation of Jesus ascends from such altar to plead for the sins of men.

Formal charges of Appellant as to passages set out in 6th preceding Article.

14. That in the passages set forth in the 6th preceding Article, you have maintained, etc. (similarly as in the 8th preceding Article).

15. That in the said passages you have maintained that the true Body and Blood of our Lord are actually and visibly present upon the altars (thereby referring to the Communion Tables) of the churches under the form or veil of and in the sacramental bread and wine, by virtue of, upon, and after the consecration of the same, irrespectively of the faith and worthiness of the communicant, so to be received by all communicants irrespectively of their faith and worthiness.

1871.

SHEPPARD v. BENNETT. Statement.

16. That in the said passages you have maintained that the true Body and Blood of our Lord are actually and visibly present upon the altars (thereby referring to the Communion Tables) of the churches, under the form or veil of and in the consecrated bread and wine, prior to and separately from the act of reception by the communicants.

17. That in the said passages you have mentioned, etc. (similarly as in the 11th preceding Article).

19. That in the said passages you have maintained the position that the Holy Communion Table is an altar of a sacrificial character, at which the ministering Priests of the Church of *England* discharge a sacerdotal office at the celebration of the Holy Communion, and that at such celebration there is a living, real, and spiritual offering of Jesus Christ by the ministering Priest.

20. That in or by the passage lettered H you have maintained the doctrine that adoration or worship is due to the consecrated bread and wine.

Formal charges of Appellant as to passages set out in 7th preceding Article.

21. That in the passages set forth in the seventh preceding Article, you have maintained, etc. (similarly as in 8th and 14th Articles of Charge).

22. That in the said passages you have maintained the doctrine that the Body and Blood of our Lord are actually and objectively present upon the altars (thereby referring to the Communion Tables) of the churches of the said United Church of *England* and *Ireland*, under the form or veil of and in the sacramental bread and wine, by virtue of, upon, and after the consecration of the same, irrespectively of the faith and worthiness of the communicant, so as to be received by all communicants irrespectively of their faith and worthiness.

23. That in or by the said passages you have maintained the doctrine, that the Body and Blood of our Lord are actually and objectively present upon the altars (thereby referring to the Communion Tables) of the churches, under the form or veil of and in the consecrated bread and wine, prior to and separately from the act of reception by the communicants.

1871.

SHEPPARD v. BENNETT. Statement.

24. That in or by the said passages you have maintained the doctrine that in the Holy Communion the natural Body and Blood of our Saviour Christ are not only in heaven, but here; to wit, upon or before the altars (thereby referring to the Communion Tables) of the churches of the United Church of *England* and *Ireland*, under the form or veil of bread and wine.

26. That in or by the said passages you have maintained, etc. (similarly as in the 19th preceding Article of Charge).

27. That in or by the passages lettered N, O, and S, set forth in the 7th preceding Article, you have maintained the doctrine that adoration is due to Christ, present upon the altars (thereby referring to the Communion Tables) of the churches of the said United Church of *England* and *Ireland* in the sacrament of the Holy Communion under the form of bread and wine, on the ground that under their veil is the sacred Body and Blood of our Lord and Saviour Jesus Christ.

Hearing in Court of Arches.

The case was heard by Sir *R. J. Phillimore*, the Dean of the Arches, on June 16, 1870.

The Respondent did not appear.

A. J. Stephens, Q.C., Dr. *Tristram*, *Archibald*, and *B. Shaw* for the Promoter.

Judgment was reserved to July 23, when an elaborate judgment was delivered by the learned Dean of the Arches, in which he held that it was not contrary to law for a Minister of the Church to affirm or promulgate the doctrine, that there is an actual and real presence, external to the act of the communicant in the elements consecrated in the administration of the sacrament of the Holy Communion; that it is unlawful for a Minister of the Church to teach (1) that there is a visible presence of our Lord upon the altar at the celebration of the Holy Communion, (2) that adoration is due to the Consecrated Elements. From this decision the Promoter appealed, as also from the interlocutory decrees or orders of June 3 and 16, 1870.

The case was heard on Nov. 28, 30; Dec. 1, 2, 1871.

1871.

SHEPPARD v. BENNETT.

Statement.

A. J. Stephens, Q.C., Dr. *Tristram*, *Archibald*, and *B. Shaw* for the Appellant.

The Respondent did not appear.

Judgment was reserved to June 8, 1872, when the following judgment, at the request of the Lord Chancellor, was read by the

Appeal to Privy Council.

ARCHBISHOP OF YORK (Dr. Thomson):—

June 8, 1872.

Judgment.

This is an Appeal from the final sentence or decree pronounced by the Dean of the Arches Court of *Canterbury*, on July 23, 1870, and also from two interlocutory orders made by the same Judge, in a cause of the office of the Judge promoted by *Thomas Byard Sheppard*, the Appellant, against the Rev. *William James Early Bennett*, Vicar of the parish of *Frome Selwood*, in the diocese of *Bath* and *Wells*, the Respondent, for having offended against the laws ecclesiastical by having, within two years from the date of the institution of the cause, caused to be printed and published certain works in which he is alleged to have advisedly maintained or affirmed doctrines directly contrary or repugnant to the Articles and Formularies of the United Church of *England* and *Ireland* in relation to the sacrament of the Lord's Supper, such works being entitled respectively 'Some Results of the Tractarian Movement of 1833,' forming one of the essays contained in a volume entitled 'The Church and the World,' edited by the Rev. *Orby Shipley*, Clerk, printed and published in *London* in the year 1867; 'A Plea for Toleration in the Church of *England*, in a Letter addressed to the Rev. *E. B. Pusey*, D.D., Regius Professor of Hebrew, and Canon of *Christ Church, Oxford*,' 2nd edition, printed and published in *London* in the year 1867; and 'A Plea for Toleration in the Church of England, in a Letter to the Rev. *E. B. Pusey*, D.D., Regius Professor of Hebrew, and Canon of *Christ Church, Oxford*,' 3rd edition, printed and published in *London* in the year 1868.

The cause was instituted in the Arches Court of *Canterbury* by virtue of Letters of Request of the late Lord Bishop

1872.

SHEPPARD v. BENNETT.

Judgment.

Proceedings in Arches Court.

of *Bath* and *Wells*, in accordance with the provisions of the Act 3rd and 4th of the Queen, cap. 86.

The Respondent was duly cited on July 26, 1869; but no appearance was given to the citation, and in default of appearance articles were filed in accordance with the practice of the Court.

On October 30th, 1869, the Judge, having previously heard counsel on behalf of the Appellant, directed the Articles to be reformed by omitting such parts thereof as charge the Respondent with contravening the 29th Article of Religion, entitled 'Of the wicked which eat not the Body of Christ in the use of the Lord's Supper.'

From such decree or order a Petition of Appeal was presented, with the permission of the Judge, and the Appeal came before the Judicial Committee of the Privy Council on Mar. 26th, 1870, when the Lords of the Committee, having heard counsel on behalf of the Appellant, agreed to report to Her Majesty their opinion against the Appeal, and that the decree or order appealed from ought to be affirmed, and the cause remitted, with all its incidents, to the Judge of the Court from which the same was appealed.

An Order in Council, confirming the report of the Judicial Committee, was afterwards made.

The cause was accordingly remitted to the Arches Court of *Canterbury*, and on June 3rd, 1870, in default of appearance on the part of the Respondent, the Judge of the Court, having heard counsel on behalf of the Appellant, himself reformed the Articles, and admitted the same as so reformed, notwithstanding that the counsel for the Promoter objected to the reformation of the Articles so made by the Judge, as being at variance with, and exceeding the reformation directed by, the order of October 30th, 1869.

On June 16th, 1870, the cause came on for hearing, and an application was then made by counsel that the passages in the 5th, 6th, 7th, and 32nd Articles, which had been struck out by the Judge in his reformation of the Articles, on June 3rd, might be reinstated. The Judge, however,

1872.

SHEPPARD v. BENNETT.

Judgment.

made no further order thereon, and the hearing of the cause was continued.

On July 23rd, 1870, the Judge, by his interlocutory decree, having the force and effect of a definitive sentence in writing, pronounced that the Proctor for the Appellant had failed in sufficiently proving the Articles, and dismissed the Respondent from the suit.

Judgment in Court of the Arches.

Appeal.

The present Appeal is from so much of the interlocutory decree or order of June 3rd, 1870, as in effect directs the passages in the 5th, 6th, 7th, and 32nd Articles to be struck out; also from the interlocutory decree or order of June 16th, 1870, whereby, in effect, the Judge declined to allow such passages to be reinstated, and from the final sentence or decree of July 23, 1870.

Respondent does not appear.

The Respondent has not appeared on the hearing of the Appeal, and the Court has not had that assistance from the argument of counsel in his behalf, which is especially desirable in cases like the present, where the Committee are called upon to advise Her Majesty on matters of grave importance as a Tribunal of Ultimate Appeal.

Consideration of Appeal from interlocutory order.

The Counsel for the Appellant first opened the Appeal from the interlocutory order of the Judge of June 3, 1870, whereby he adhered to the reformation that he had made in the 5th, 6th, 7th, and 32nd Articles of Charge.

With regard to the reformation of the Articles, the course originally taken seems to be sanctioned by usage; but it appears to their Lordships to be a course attended with considerable inconvenience, and one which might lead to great delay, if not to a miscarriage.

The original order of the Arches Court directed the Articles of Charge to be reformed, by omitting all such parts thereof as charged the Respondent with contravening the 29th Article of Religion, and this order was affirmed on appeal, on the recommendation of this Committee.

The form of the order leaves open to further determination by the Court what parts of the Articles of Charge do, in effect, charge the Respondent with contravening the 29th Article of Religion, and thus opens the door to further

1872.

SHEPPARD v. BENNETT. Judgment.

discussion and (as in this case) to a further appeal. In the mean time the Judge himself strikes out such parts of the Articles of Charge as he conceives to be within the previous order of the Court, and then proceeds to hear the cause with the record so altered. If he should have erroneously struck out parts not affected by the order, the attention of the Accused, in his answer or evidence, will not have been called to the parts struck out, for he would be entitled to consider them as no longer forming part of the charge; but if the Promoter, on appeal, should succeed in restoring the passages in question, it would obviously become necessary to allow the Respondent an opportunity of meeting the restored charges.

In the present case we have thought it best to allow the Appellant to conduct his argument as if the passages which he avers should not have been struck out still remained part of the record, and to found any argument upon such passages as he might be advised, provided the argument did not seek to establish a contravention by the Respondent of the 29th Article of Religion.

But we think it right to observe that it would be proper, in future, that before any appeal be presented to Her Majesty in Council, in respect of an order directing the reformation of Articles of Charge or other pleadings, the actual reformation which appears to the Judge to be required, should be made by him on the face of the order, so that on appeal the very passages omitted should be clearly brought under the judgment of this Committee, instead of an order directing, by general reference, the nature of the alteration required.

Of appeal from final decree of Court of the Arches.

On proceeding to the consideration of the appeal from the final decree of the Court of Arches, there is one point which was prominently brought forward in the opening of the case by the Counsel for the Appellant, which it appears to their Lordships may be separately disposed of.

To hold a visible presence is unlawful.

The Articles of Charge set forth several passages from the 2nd and 3rd editions of a work published by the Respondent, called 'A Plea for Toleration in the Church of *England*, in a letter to the Rev. *E. B. Pusey*.' Now the

1872.

SHEPPARD v. BENNETT. Judgment.

2nd edition of this work was published in 1867, and the 3rd edition in 1868. The 3rd edition contains important corrections of expressions in the 2nd edition, which expressions form part of the charge against the Respondent. The original expressions and their correction are fairly stated and set forth by the Appellant in the 7th Article of Charge. The learned Judge in the Court below has stated, that he has no doubt that the expressions originally used by the Respondent—viz. 'the real actual and visible presence of the Lord upon the altars of our churches;' and again, 'who myself adore and teach the people to adore the Consecrated Elements, believing Christ to be in them—believing that under their veil is the sacred Body and Blood of our Lord and Saviour Jesus Christ'—'contravened the plain and clear intent of the Formularies of the Church.' And the learned Judge has also set forth the alterations made in the 3rd edition of the Respondent's work of these statements, and on the passages so altered has found that the Respondent has not been guilty of a contravention of the Articles as alleged by the Promoter. Mr. *Bennett's* own words, in adopting the altered words, are as follows:—'My meaning and that which passed through my mind in writing the original passages was precisely the same as that which is now conveyed in the words substituted, but as the original words were liable to a different construction from that in which I used them, I therefore most willingly in this edition adopt another formula to express my meaning.' The learned Judge has regretted that these alterations made by Mr. *Bennett* in his 3rd edition are unaccompanied by any expression of regret or self-reproach on the Respondent's part, for the mischief which his crude and rash expressions have caused. Their Lordships feel obliged to adopt the censure of the learned Judge on this point.

To maintain adoration of Christ in the Consecrated Elements is unlawful.

Upon this state of facts the learned Counsel urged that there had been no retractation of the original user, and that, in default of actual retractation, the learned Judge should have condemned the Respondent in respect of the words

Distinction between 2nd and 3rd editions.

1872.

SHEPPARD v. BENNETT. Judgment.

used by him in the 2nd edition of his work, though varied by the substituted words in the 3rd edition, and he cited several authorities for the purpose of supporting this argument.

But, without regarding the Respondent's language as a retractation, their Lordships think that it is competent for them to take into consideration any explanation that an accused person may give of the language used by him, and to determine whether such explanation is made *bonâ fide* and is entitled to credit. They attach great importance to the fact that the 3rd edition was published before suit, and they think that they may accept his later words as the more correct expression of the Respondent's meaning.

Principles which have governed former decisions

In proceeding to consider the substance of the charges against the Respondent, their Lordships think it desirable to recall to mind the principles on which former decisions in similar cases have proceeded.

In the cases of *Williams* and *Wilson* (*ante*, p. 94) their Lordships laid down as follows:—

in the 'Essays and Reviews' case

'These prosecutions are in the nature of criminal proceedings, and it is necessary that there should be precision and distinctness in the accusation. The Articles of Charge must distinctly state the opinions which the Clerk has advisedly maintained, and set forth the passages in which those opinions are stated; and, further, the Articles must specify the doctrines of the Church which such opinions or teaching of the Clerk are alleged to contravene, and the particular Articles of Religion or portions of the Formularies which contain such doctrines. The accuser is, for the purpose of the charge, confined to the passages which are included and set out in the Articles as the matter of the accusation; but it is competent to the accused party to explain from the rest of his work the sense or meaning of any passage or word that is challenged by the accuser.'

So in the judgment in the *Gorham* case:—

in the Gorham case.

'The question which we have to decide is, not whether the opinions are theologically sound or unsound, not whether upon some of the doctrines comprised in these opinions, other opinions opposite to them may or may not

1872.

SHEPPARD v. BENNETT. Judgment.

be held with equal or even greater reason by other learned and pious Ministers of the Church; but whether these opinions now under our consideration, are contrary or repugnant to the doctrines which the Church of *England*, by its Articles, Formularies, and Rubrics, requires to be held by its Ministers, so that upon the ground of those opinions the Appellant can lawfully be excluded from the benefice.' (*Ante*, p. 22.) 'This question must be decided by the Articles and the Liturgy; and we must apply to the construction of those books the same rules which have been long established, and are by law applicable to the construction of all written instruments. We must endeavour to attain for ourselves the true meaning of the language employed, assisted only by the consideration of such external or historical facts as we may find necessary to enable us to understand the subject-matter to which the instruments relate, and the meaning of the words employed.' (*Ante*, p. 23.) 'There were different doctrines or opinions prevailing or under discussion at the times when the Articles and Liturgy were framed, and ultimately made part of the law; but we are not to be in any way influenced by the particular opinions of the eminent men who propounded or discussed them, or by the authorities by which they may be supposed to have been influenced, or by any supposed tendency to give preponderance to Calvinistic or Arminian doctrines. The Articles and Liturgy, as we now have them, must be considered as the final result of the discussion which took place; not the representation of the opinions of any particular men, Calvinistic, Arminian, or any other; but the conclusion which we must presume to have been deduced from a due consideration of all the circumstances of the case, including both the sources from which the declared doctrine was derived, and the erroneous opinions which were to be corrected.' (*Ante*, p. 23.) 'This Court has no jurisdiction or authority to settle matters of faith or to determine what ought in any case to be the doctrine of the Church of *England*. Its duty extends only to the consideration of that which is by law established to be the doctrine

1872.

SHEPPARD v. BENNETT. Judgment.

of the Church of *England* upon the true and legal construction of the Articles and Formularies.' (*Ante*, p. 35.)

Lord *Stowell* had long before said, in the case of *King's Proctor* v. *Stone*, 'If any Article is really a subject of dubious interpretation, it would be highly improper for the Court to fix on one meaning and prosecute all those who hold a contrary opinion regarding its interpretation. It is a very different thing where the authority of the Articles is totally eluded, and the party deliberately declares the intention of teaching doctrines contrary to them.' (1 Consist. Rep., p. 429.)

To the principles thus laid down their Lordships will adhere in the present case.

Principle to be applied in dealing with alterations in the Prayer Book.

The attention of the Court has been directed to the successive revisions of the Book of Common Prayer, and to alterations or omissions which have been made in it at different times. Changes by which words or passages inculcating particular doctrines, or assuming a belief in them, have been struck out, are most material as evidence that the Church has deliberately ceased to affirm those doctrines in her public services. At the same time it is material to observe that the necessary effect of such changes, when they stand alone, is that it ceases to be unlawful to contradict such doctrines, and not that it becomes unlawful to maintain them. In the public or common prayers and devotional offices of the Church all her members are expected and entitled to join; it is necessary, therefore, that such forms of worship as are prescribed by authority for general use should embody those beliefs only which are assumed to be generally held by members of the Church.

A stricter rule is to be applied to matters of ritual than to matters of opinion.

In the case of *Vesterton* v. *Liddell* (and again in *Martin* v. *Mackonochie*) their Lordships say, 'In the performance of the services, rites, and ceremonies ordered by the Prayer Book, the directions contained in it must be strictly observed; no omission and no addition can be allowed.' (*Ante*, pp. 74, 115.) If the Minister be allowed to introduce at his own will variations in the rites and ceremonies

1872.

SHEPPARD v. BENNETT.

Judgment.

that seem to him to interpret the doctrine of the service in a particular direction, the service ceases to be what it was meant to be, common ground on which all Church people may meet, though they differ about some doctrines. But the Church of *England* has wisely left a certain latitude of opinion in matters of belief, and has not insisted on a rigorous uniformity of thought which might reduce her communion to a narrow compass.

Tripartite nature of charge against Respondent.

Dealing only with the 3rd edition of the Respondent's work, and having regard to their former decision, that the charge of contradicting the 29th Article of Religion as to reception of the wicked should be struck out, their Lordships may consider the remaining charges against the Respondent under three heads:—

1. *As to the presence of Christ in the Holy Communion.*
2. *As to sacrifice in the Holy Communion.*
3. *As to adoration of Christ present in the Holy Communion.*

The Respondent is charged with maintaining under these three heads the following propositions:—

Alleged doctrine of Respondent as to 'the Presence.'

1. That in the sacrament of the Lord's Supper there is an actual presence of the true Body and Blood of our Lord in the consecrated bread and wine, by virtue of and upon the consecration without or external to the communicant, and irrespective of the faith and worthiness of the communicant, and separately from the act of reception by the communicant, and it was contended by counsel under this head that the true Body of Christ meant the natural Body.

As to the sacrificial character of the Lord's Supper.

2. That the Communion Table is an altar of sacrifice, at which the Priest appears in a sacerdotal position at the celebration of the Holy Communion, and that at such celebration there is a great sacrifice or offering of our Lord by the ministering Priest, in which the mediation of our Lord ascends from the altar to plead for the sins of men.

As to adoration of Christ under the form of the elements.

3. That adoration is due to Christ present upon the altars or Communion Tables of the churches, in the Sacrament, under the form of bread and wine, on the ground

that under their veil is the Body and Blood of our Lord.

The several positions so maintained are averred, each and all, to be repugnant to the doctrines of our Church, as set forth in the Articles and Formularies in that behalf specially alleged.

Their Lordships are bound to consider, in the first place, what has been affirmed and what has been denied, in reference to the doctrine to which these three statements relate. The doctrine of the Church on these subjects.

The 4th Article of Religion affirms:—

'That Christ did truly rise again from death and took again His body, with flesh, bones, and all things appertaining to the perfection of man's nature, wherewith He ascended into heaven; and there sitteth until He return to judge all men at the last day.' The 4th Article.

In the 28th Article of Religion it is affirmed:—

a. 'The Supper of the Lord is not only a sign of the love that Christians ought to have among themselves, one to another, but rather is a sacrament of our redemption by Christ's death; insomuch that to such as rightly, worthily, and with faith receive the same, the bread which we break is a partaking of the Body of Christ, and likewise the cup of blessing is a partaking of the Blood of Christ.' The 28th Article.

b. 'Transubstantiation (or the change of the substance of bread and wine) in the Supper of the Lord cannot be proved by Holy Writ; but is repugnant to the plain words of Scripture, overthroweth the nature of a sacrament, and hath given occasion to many superstitions.'

c. 'The Body of Christ is given, taken, and eaten in the Supper only after an heavenly and spiritual manner.'

d. 'The mean whereby the Body of Christ is received and eaten in the Supper, is faith.'

e. 'The sacrament of the Lord's Supper was not by Christ's ordinance reserved, carried about, lifted up, or worshipped.'

By the 29th Article of Religion it is affirmed:—

f. 'The wicked and such as be void of a lively faith, although they do carnally and visibly press with their The 29th Article.

1872.

SHEPPARD v. BENNETT. Judgment.

teeth (as St. *Augustine* saith) the sacrament of the Body and Blood of Christ, yet in no wise are they partakers of Christ; but rather to their condemnation do eat and drink the sign or sacrament of so great a thing.'

By the 31st it is affirmed:—

The 31st Article.

g. 'The offering of Christ once made is that perfect redemption, propitiation, and satisfaction for all the sins of whole world, both original and actual; and there is none other satisfaction for sin, but that alone.' And—

h. 'The sacrifices of masses, in which it was commonly said that the Priest did offer Christ for the quick and the dead to have remission of pain or guilt, were blasphemous fables and dangerous deceits.'

The Catechism.

i. In the Catechism it is stated that 'the Body and Blood of Christ are verily and indeed taken and received by the faithful in the Lord's Supper.'.

Their Lordships proceed, with these passages before them, to examine the charges made against the Respondent. The first relates to the presence of the Body and Blood of Christ in the Holy Communion.

First as to the Presence.

1. The Church of *England* in the passages just cited holds and teaches affirmatively that in the Lord's Supper the Body and Blood of Christ are given to, taken, and received by the faithful communicant. She implies, therefore, to that extent, a presence of Christ in the ordinance to the soul of the worthy recipient. As to the mode of this presence she affirms nothing, except that the Body of Christ is 'given, taken, and eaten in the Supper only after an heavenly and spiritual manner,' and that 'the mean whereby the Body of Christ is received and eaten is faith.' Any other presence than this—any presence which is not a presence to the soul of the faithful receiver—the Church does not by her Articles and Formularies affirm or require her Ministers to accept. This cannot be stated too plainly. The question is, however, not what the Articles and Formularies affirm, but what they exclude. The Respondent maintains a presence which is (to use his own expression) 'real, actual, objective,' a presence in the Sacrament, a pre-

sence upon the altar, under the form of bread and wine. He does not appear to have used the expression 'in the Consecrated Elements' in his 3rd edition; this is one of the points on which the language of the 2nd edition was altered. And the question raised by the Appeal is, whether his position is contradictory or repugnant to anything in the Articles or Formularies, so as to be properly made the ground of a criminal charge.

The Respondent's doctrine does not necessarily contradict the 28th Article of Religion.

Setting aside the declaration at the end of the Communion Office, which will be presently considered, we find nothing in the Articles and Formularies to which the Respondent's position is contradictory or repugnant.

The statement in the 28th Article of Religion that the Body of Christ is given, taken, and eaten in the Lord's Supper, only after a heavenly and spiritual manner, excludes undoubtedly any manner of giving, taking, or receiving which is not heavenly or spiritual. The assertion of a 'real, actual, objective' presence, introduces, indeed, terms not found in the Articles or Formularies; but it does not appear to assert, expressly or by necessary implication, a presence other than spiritual, nor to be necessarily contradictory to the 28th Article of Religion.

Nor the 29th.

The 29th Article of Religion, which is entitled 'of the wicked which eat not the Body of Christ in the use of the Lord's Supper,' and which affirms that the wicked and such as be void of a lively faith, 'are in no wise partakers of Christ,' may suggest, indeed, an inference unfavourable to the Respondent's statements, but cannot be said to be plainly contradictory of them or necessarily to exclude them. The two propositions, that the faithful receive Christ in the Lord's Supper, and that the wicked are in no wise partakers of Christ, when taken together, do not appear to be contradicted by the statement that there is a real, actual, objective presence of the Body and Blood of Christ in the Sacrament after a heavenly and spiritual manner.

Consideration of 'The Black Rubric.'

The 'Declaration of Kneeling' should now be considered. It is as follows:—

'Whereas it is ordained in this office for the administra-

1872.

SHEPPARD v. BENNETT. Judgment.

tion of the Lord's Supper, that the communicants should receive the same kneeling (which order is well meant, for the signification of our humble and grateful acknowledgments of the benefits of Christ therein given to all worthy receivers, and for the avoiding of such profanation and disorder in the Holy Communion, as might otherwise ensue), yet, lest the same kneeling should by any persons, either out of ignorance or infirmity, or out of malice and obstinacy, be misconstrued and depraved; It is hereby declared, That thereby no adoration is intended, or ought to be done, either unto the Sacramental Bread or Wine there bodily received, or unto any corporal presence of Christ's natural Flesh and Blood, for the Sacramental Bread and Wine remain still in their very natural substances, and therefore may not be adored (for that were idolatry, to be abhorred of all faithful Christians), and the natural Body and Blood of our Saviour Christ are in heaven, and not here; it being against the truth of Christ's natural Body to be at one time in more places than one.'

Which was altered on re-insertion in 1662.

This declaration originally appeared in the second Prayer Book of *Edward* VI., A.D. 1552, in which book the position of kneeling was positively enjoined upon those who received the Sacrament. It was issued by the King, and was ordered by the Council to be appended to the Prayer Book, but after the book had received the sanction of Parliament, so that it was not of statutory authority. From the Prayer Book of *Elizabeth* (1559) the declaration was omitted; perhaps because it had been incorporated in the Articles of Religion of 1552. It was omitted from the Thirty-nine Articles of Religion in 1562. In 1662 it was inserted in the present Prayer Book, and became of equal authority with the rest of the Prayer Book. The form of the declaration was somewhat altered; the words 'unto any real and essential presence there being of Christ's natural Flesh and Blood,' were altered to 'unto any corporal presence of Christ's natural Flesh and Blood,' and the words 'true natural Body' became 'natural Body.'

The Appellant's con-

It was urged for the Appellant that, since the Church recognises only one Body of Christ, the natural and now

glorified Body which is spoken of in the Fourth Article for Religion, and since the declaration asserts that this Body is 'in heaven and not here,' the only presence in the Sacrament which can be held consistently with the declaration is a presence to the soul of the communicant.

tention on this point.

It was insisted that the word 'natural' applied to the Body of Christ can convey no additional meaning, unless it be used to distinguish the true Body of Christ, which is His natural Body, from the Church, which is His Body in a mystical or figurative sense; and that the expression 'corporal presence' cannot mean a presence in the manner or under the conditions in and under which material bodies are present or exist in space; that it must mean or include any presence whatever in the elements, as contra-distinguished from a presence to the spiritual apprehension of the receiver. There can be no question, it was argued, as to the mode or manner of the presence: for no mode or manner of presence is conceivable which would reconcile the proposition that the true Body of Christ is in the elements, with the proposition that the natural Body is in heaven and not here.

Their Lordships are of opinion that these inferences, whether probable or not, are by no means of that plain and certain character which the conclusion they are asked to draw from them requires. The matters to which they relate are confessedly not comprehensible, or very imperfectly comprehensible, by the human understanding; the province of reasoning as applied to them is therefore very limited; and the terms employed have not, and cannot have, that precision of meaning which the character of the argument demands. Concerning the mode of reception of the Body and Blood of Christ by the faithful communicant, the Church affirms nothing more than that it is heavenly and spiritual, and that the mean whereby we receive is faith.

'Corporal' is not an equivalent for 'real and essential.'

Nor can their Lordships accede to the argument that the words 'corporal presence of Christ's natural Flesh and Blood' must be understood as the Appellant understands them, and the phrase 'corporal presence' regarded merely

1872.

SHEPPARD v. BENNETT. Judgment.

as an equivalent for the different expression in lieu of which it was substituted. On the contrary, it is at the least probable that, as the declaration itself was introduced in order to conciliate scruples in one quarter, the alteration made in it was designed to remove objections entertained against it in another.

Their Lordships could not advise the condemnation of a Clergyman for maintaining that the use in 1662 of the word 'corporal' instead of the words 'real and essential' in the Declaration of Kneeling was an intentional substitution, implying that there may be a real or essential presence as distinguished from a corporal presence.

The Respondent has nowhere alleged in terms a corporal presence of the natural Body of Christ in the elements; he has never affirmed that the Body of Christ is present in a 'corporal' or 'natural' manner. On the contrary, he has denied this, and he speaks of the presence in which he believes as 'spiritual,' 'supernatural,' 'sacramental,' 'mystical,' 'ineffable.'

Secondly, as to a sacrificial altar.

2. The next charge against the Respondent is, that he has maintained that the Communion Table is an altar of sacrifice, at which the Priest appears in a sacerdotal position at the celebration of the Holy Commuion, and that at such celebration there is a great sacrifice or offering of our Lord by the ministering Priest, in which the mediation of our Lord ascends from the altar to plead for the sins of men.

The Church of England has no altar.

The Church of England does not by her Articles or Formularies, teach or affirm the doctrine maintained by the Respondent. That she has deliberately ceased to do so would clearly appear from a comparison of the present Communion Office with that in King *Edward's* First Book, and of this again with the Canon of the Mass in the Sarum Missal.

This subject was fully discussed before their Lordships in *Westerton* v. *Liddell*, when it was decided that the 'change in the view taken of the Sacrament naturally called for a corresponding change in the altar. It was no longer to be an altar of sacrifice, but merely a table at which the com-

municants were to partake of the Lord's Supper.' (*Ante*, p. 70.)

The 31st Article of Religion, after laying down the proposition (which is adopted also, in words nearly the same, in the Prayer of Consecration), that 'the offering of Christ once made, is that perfect redemption, propitiation, and satisfaction for all the sins of the whole world, both original and actual,' and that 'there is none other satisfaction for sin but that alone,' proceeds, on the strength of these propositions, to say that 'the sacrifices of masses, in the which it was commonly said that the Priest did offer Christ for the quick and the dead to have remission of pain or guilt, were blasphemous fables and dangerous deceits.'

Nor any propitiatory offering.

It is not lawful for a Clergyman to contradict, expressly or by inference, either the proposition which forms the first part of this Article, or any proposition plainly deducible from the condemnation of propitiatory masses which forms the second part of it, and is stated as a corollary to the first.

It is not lawful for a Clergyman to teach that the sacrifice or offering of Christ upon the Cross, or the redemption, propitiation, or satisfaction, wrought by it, is or can be repeated in the ordinance of the Lord's Supper; nor that in that ordinance there is or can be any sacrifice or offering of Christ which is efficacious in the sense in which Christ's death is efficacious, to procure the remission of the guilt or punishment of sins.

Qualified use of the term 'sacrifice'

It is well known, however, that by many Divines of eminence, the word sacrifice has been applied to the Lord's Supper in the sense not of a true propitiatory or atoning sacrifice, effectual as a satisfaction for sin, but of a rite which calls to remembrance and represents before God that one true sacrifice. To take one example, Bishop *Bull* says:

as in Bishop Bull.

'In the Eucharist, then, Christ is offered, not hypostatically, as the Trent Fathers have determined, for so He was but once offered, but commemoratively only; and this commemoration is made to God the Father, and is not a bare

1872.

SHEPPARD v. BENNETT. Judgment.

remembering or putting ourselves in mind of Him. For every sacrifice is directed to God, and the oblation therein made, whatsoever it be, hath Him for its object, and not man. In the Holy Eucharist, therefore, we set before God the bread and wine, "as figures or images of the precious Blood of Christ shed for us, and of His precious Body" (they are the very words of the Clementine Liturgy), and plead to God the merit of His Son's sacrifice once offered on the Cross for us sinners, and in this sacrament represented, beseeching Him for the sake thereof to bestow His heavenly blessings on us.' (Bull's Works, vol. ii., p. 22.)

Distinction between a thing and a mere representation thereof.

The distinction between an act by which a satisfaction for sin is made, and a devotional rite by which the satisfaction so made is represented and pleaded before God, is clear, though it is liable to be obscured, not only in the apprehension of the ignorant, but by the tendency of theologians to exalt the importance of the rite till the distinction itself well-nigh disappears. To apply the word sacrifice in the sense in which Bishop *Bull* has used it to the ordinance of the Lord's Supper, though it may be liable to abuse and misapprehension, does not appear to be a contravention of any proposition legitimately deducible from the thirty-ninth Article. It is not clear to their Lordships that the Respondent has so used the word 'sacrifice' as to contradict the language of the Articles.

The meaning of the Respondent's use of 'sacrifice' is doubtful.

Thirdly, as to adoration.

3. Their Lordships now proceed to the third charge, which relates to the adoration of Christ present in the Sacrament.

The 20th and 27th Articles of Charge contain the false doctrines alleged to be held by Mr. *Bennett*. The 20th charges that he affirms the doctrine that adoration or worship is due to the consecrated bread and wine.

The 27th, that he affirms that adoration is due to Christ present upon the altars of our churches in the sacrament of the Holy Communion, under the form of bread and wine, on the ground that under their veil is the sacred Body and Blood of our Lord (the passages referred to for proof are set out in the 7th Article).

The 31st Article charges that these doctrines are con-

1872.

SHEPPARD v. BENNETT. Judgment.

trary to the 28th Article of Religion, and the Declaration on Kneeling.

The passages relied on as the ground of these charges are the following:—

Passages relied on by Appellant.

'The reader will observe that in the two first editions, at page 3, the words were, "*the real actual and visible presence of our Lord upon the altars of our churches.*" In the present edition he will find at page 2 the following words substituted: "*the real and actual presence of our Lord under the form of bread and wine upon the altars of our churches.*" He will also observe that, at page 14 in the former editions, the words were, "*who myself adore and teach the people to adore the Consecrated Elements, believing Christ to be in them—believing that under their veil is the sacred Body and Blood of my Lord and Saviour Jesus Christ.*" He will now find the following words substituted: "*who myself adore and teach the people to adore Christ present in the Sacrament, under the form of bread and wine, believing that under their veil is the sacred Body and Blood of my Lord and Saviour Jesus Christ.*"'

'The three great doctrines on which the Catholic Church has to take her stand are these:—I. The Real Objective Presence of our Blessed Lord in the Eucharist; II. "The sacrifice offered by the Priest;" and, III. The adoration due to the Presence of our Blessed Lord therein."'

'Well, I do not know what others of my brethren in the Priesthood may think—I do not wish to compromise them by anything that I say or do—but seeing that I am one of those who burn lighted candles at the altar in the daytime; who use incense at the Holy Sacrifice; who use the eucharistic vestments; who elevate the Blessed Sacrament; who myself adore, and teach the people to adore, Christ present in the Sacrament, under the form of bread and wine; believing that under their veil is the sacred Body and Blood of my Lord and Saviour Jesus Christ; seeing all this, it may be conceived that I cannot rest very much at ease under the imputations above recited."

Adoration of the Consecrated Ele-

Their Lordships agree with the learned Judge of the Court below that the doctrine charged in the 20th Article—

1872.

SHEPPARD v. BENNETT. Judgment.

ments condemned.

namely, that adoration is due to the Consecrated Elements, is contrary to law, and must be condemned. But they have admitted, as the learned Judge has done, Mr. *Bennett's* explanation of that language, and therefore they are not called upon to condemn Mr. *Bennett* under the 20th Article. The 27th Article of Charge therefore alone remains for decision; it is as follows:—

Adoration of Christ under the form of bread and wine considered.

'That in or by the passages lettered N, O, and S, hereinbefore set forth in the seventh preceding Article, you have maintained or affirmed and promulgated the doctrine that adoration is due to Christ, present upon the altars (thereby referring to the Communion Tables) of the churches of the said United Church of *England* and *Ireland* in the sacrament of the Holy Communion under the form of bread and wine, on the ground that under their veil is the sacred Body and Blood of our Lord and Saviour Jesus Christ.'

Their Lordships have now to consider whether or not the passages from the Respondent's writings above set forth are necessarily repugnant to or contradictory of the 28th Article of Religion, or of the Declaration of Kneeling, as alleged in the 31st Article of Charge.

The Declaration of Kneeling states that, by the direction that the communicants shall receive the Consecrated Elements kneeling, 'no adoration is intended or ought to be done either to the sacramental bread and wine there bodily received, or to any corporal presence of Christ's natural Flesh and Blood.'

According to this declaration, neither the elements nor any corporal presence of Christ therein ought to be adored.

The 28th Article lays down that 'the sacrament of the Lord's Supper was not by Christ's ordinance reserved, carried about, lifted up, or worshipped.'

In the 25th Article it has been affirmed 'that the Sacraments were not ordained by Christ to be gazed upon, or to be carried about, but that we should duly use them.'

It was laid down in *Martin* v. *Mackonochie* that such acts as the elevation of the cup and paten, and kneeling

and prostration of the Minister before them, were unlawful, because they were not prescribed in the Rubric of the Communion Office, and because acts not prescribed were to be taken as forbidden. Their Lordships in that judgment adopted the words of the Committee in *Westerton* v. *Liddell*; 'for the performance of the services, rites, and ceremonies ordered by the Prayer Book, the directions contained in it must be strictly observed; no omission and no addition can be permitted.' (*Ante*, pp. 74, 119.)

Application of doctrine of the Court to outward acts,

It follows, then, that the Church of *England* has forbidden all acts of adoration to the Sacrament, understanding by that the Consecrated Elements. She has been careful to exclude any act of adoration on the part of the Minister at or after the consecration of the elements and to explain the posture of kneeling prescribed by the Rubric. If the charge against Mr. *Bennett* were that he had performed an outward act of adoration on any occasion in the service, the principles laid down in *Martin* v. *Mackonochie* would apply to this case. Such an act could not be done except in the service, because the Sacrament may not be 'reserved.' But even if the Respondent's words are a confession of an unlawful act, it is questionable whether such a confession would amount to false doctrine. And it is also fair to remember, in the Respondent's favour, that the judgment in the case of *Martin* v. *Mackonochie*, which established the unlawfulness of introducing acts of adoration, was not delivered until December 23, 1868, after the publication of the words that are now impugned. Some of their Lordships have doubted whether the word 'adore,' though it seems to point rather to acts of worship, such as are forbidden by the 28th Article, may not be construed to refer to mental adoration, or prayers addressed to Christ present spiritually in the Sacrament, which does not necessarily imply any adoration of the Consecrated Elements or of any corporal or natural presence therein.

and to Respondent's words.

The Respondent is entitled to the benefit of the doubt.

Upon the whole, their Lordships, not without doubts and division of opinions, have come to the conclusion that this charge is not so clearly made out as the rules which govern penal proceedings require. Mr. *Bennett* is entitled

1872.

SHEPPARD v. BENNETT. Judgment.

to the benefit of any doubt that may exist. His language has been rash, but as it appears to the majority of their Lordships that his words can be construed so as not to be plainly repugnant to the two passages articled against them, their Lordships will give him the benefit of the doubt that has been raised.

Comments on the judgment of Sir R. J. Phillimore.

Their Lordships having arrived at the conclusion that they must advise Her Majesty that the Appeal must be dismissed, feel bound to add that there is much in the judgment of the learned Judge in the Court below with which they are unable to concur. The learned Judge has endeavoured to settle by a mass of authorities what is the doctrine of the Church of *England* on the subject of the Holy Communion. It is not the part of the Court of Arches nor of this Committee, to usurp the functions of a synod or council. Happily their duties are much more circumscribed—namely, to ascertain whether certain statements are so far repugnant to, or contradictory of, the language of the Articles and Formularies, construed in their plain meaning, that they should receive judicial condemnation.

Their Lordships will not attempt to examine in detail the catena of authorities which the Judge of the Arches has brought together, nor that of the learned Counsel who appeared for the Appellant. No mode of argument is more fallacious on a subject so abstruse and of so many aspects; short extracts, even where candidly made, as in this case, give no fair impression of an author's mind. Thus Dean *Jackson* is quoted in the judgment; but the quotation omits the preceding sentence, which gives to the whole passage a meaning difficult to reconcile with the purpose for which it is used; while the opinion of this eminent Divine would have been more correctly represented by referring also to the following remarkable passage in a previous chapter of this work: 'What need, then, is there of His bodily presence in the Sacrament, or of any other presence than the influence or emission of virtue from His heavenly sanctuary into our souls? He has left us the consecrated elements of bread and wine, to be unto us

Short extracts only mislead.

more than the hem of His garment. If we do but touch and taste them with the same faith by which this woman touched the hem of His garment, our same faith shall make us whole.' (Works, iii., x., 55.) Several of those who are cited by the learned Judge are living persons of greater or less note, who cannot rank as authorities for the history of a great controversy.*

The works of living persons do not rank as authorities.

One of the authorities is so questionable, that it requires a passing examination. The learned Judge, after quoting the 28th Article of Religion, introduces as 'a *contemporanea expositio*, from the compiler of this article, which cannot, I think, be gainsaid,' a letter from Bishop *Gheast* to *Cecil*, under the date 1556 (probably a mistake for 1566) explaining the sense which he put upon the word 'only' in the 28th Article. *Gheast* does not say that he was the 'compiler of the 28th Article, all but one sentence of which had been in the Articles of 1552; and the context shows that he used the word 'Article' only of this sentence, which, he says, was 'of mine own penning.' Upon the faith of this letter, genuine or not, avowedly written for a personal purpose ('for mine own purgation'), is founded an exposition of the words 'only after a heavenly

Gheast's letter does not bind the Clergy or the Court.

* Among the authorities relied on by Sir R. J. Phillimore in his elaborate judgment, occupying one hundred pages of the Law Reports (Ad. and Ec., vol. iii., p. 167), are Ratramn, Ælfric, Hooker, Jewel, Andrewes, Laud, Donne, Overall, Herbert, J. Taylor, Hey, Pearson, Savaria, Jackson (Dean of Peterborough), Cosin, Brevint, Thorndike, Bramhall, Sparrow, Tillotson, Yardley, Beveridge, Nicholson, Sherlock, Secker, Ken, Field, Poynet, St. Augustine, Cranmer, Bull, Waterland, South, Barrow, Wilson, Cleaver, Keble; and among living persons, Dr. H. P. Liddon, Bishop of St. David's, Bishop of Carlisle (Dr. Goodwin), Bishop of Salisbury (Dr. Moberly), Bishop of Ely (Dr. Browne), Pusey. The method of arriving at a judicial conclusion by the examination and citation of authorities, is condemned as fallacious by the Committee, the true question being, not whether the doctrines libelled can be supported by a catena of authorities, but whether such doctrines contradict the Articles and Formularies of the Church. If they do so contradict the Articles and Formularies, the citation of great names is no protection; if they do not, such citation is unnecessary.

1872.

SHEPPARD v. BENNETT. Judgment.

and spiritual manner,' as meaning that though a man 'took Christ's Body in his hand, received it with his mouth, and that corporally, naturally, really, substantially, and carnally . . . . yet did he not for all that see it, feel it, smell it, nor taste it.' Upon this alleged exposition their Lordships feel themselves free to observe that the words 'only after a heavenly and spiritual manner,' do not appear to contain or involve the words 'corporally, naturally, and carnally,' but to exclude them; and that it is the Article, and not the questionable comments of a doubtful letter written for personal motives, which is binding on the Clergy and on this Court.

The Court takes its stand on the Articles and Liturgy as they now exist.

Their Lordships recall once more, in acknowledging the learning that has been brought to bear upon this case, the principle which this Committee has long since laid down. 'There were different doctrines or opinions prevailing or under discussion at the times when the Articles and Liturgy were framed, and ultimately made part of the law; but we are not to be in any way influenced by the particular opinions of the eminent men who propounded or discussed them, or by the authorities by which they may be supposed to have been influenced, or by any supposed tendency to give preponderance to Calvinistic or Arminian doctrines. The Articles and Liturgy, as we now have them, must be considered as the final result of the discussion which took place; not the representation of the opinions of any particular men, Calvinistic, Arminian, or any other; but the conclusion which we must presume to have been deduced from a due consideration of all the circumstances of the case, including both the sources from which the declared doctrine was derived, and the erroneous opinions which were to be corrected.' (*Ante*, p. 23.)

Citations only illustrate the liberty which has been enjoyed.

Citations from established authors may be of use to show that 'the liberty which was left by the Articles and Formularies has been actually enjoyed and exercised by the members and Ministers of the Church of *England*.' But, to say the least, very few of the quotations in the judgment exhibit the same freedom of language as do the extracts from Mr. *Bennett*. And after every authority had

1872.

SHEPPARD v. BENNETT. Judgment.

been examined, there would still remain the question that is before this Committee, whether the license or liberty is really allowed by the Articles and Formularies—whether anything has been said by the Respondent which plainly contradicts them. If the Respondent had made statements contradicting the Articles or Formularies, the citation of great names would not have protected him; if he has not done so, he is safe without their protection.

There is one passage in the judgment which seems especially to call for comment:—

Further comment on judgment of the Court below.

'With respect to the second and corrected edition of his pamphlet, and the other work for which he is articled, I say that the objective, actual, and real presence, or the spiritual real presence, a presence external to the act of the communicant, appears to me to be the doctrine which the Formularies of our Church, duly considered and construed so as to be harmonious, intended to maintain. But I do not lay down this as a position of law, nor do I say that what is called the Receptionist Doctrine is inadmissible; nor do I pronounce on any other teaching with respect to the mode of presence. I mean to do no such thing by this judgment. I mean by it to pronounce only that to describe the mode of presence as objective, real, actual, and spiritual, is certainly not contrary to the law.'

And its extra-judicial statements.

Their Lordships regret that the learned Judge should have put forth this extra-judicial statement, in which he adopts words that are not used in the Articles or Formularies as expressing their doctrine. The word 'receptionist' is as foreign to the Articles as the word 'objective.' If it refers to the doctrine that 'the mean whereby the Body of Christ is received and eaten is faith,' then it is plainly admissible, for these are the very words of the Church; and the question before their Lordships has been rather what amount of deviation from them was admissible. Their Lordships have already said that any presence which is not a presence to the soul of the faithful receiver, the Church does not by her Articles and Formularies affirm. They need not ask whether there is really any doubt as to the admissibility of the doctrine of *Hooker*

1872.

SHEPPARD v. BENNETT. Judgment.

and *Waterland*, who appear to be described as 'receptionists,' in the Church of which they have been two of the greatest ornaments.

General observations on the Respondent's language, etc.

Their Lordships have not arrived at their decision without great anxiety and occasional doubt. The subject is one which has always moved the deepest feelings of religious men, and will continue to do so. There might have been expected from a theologian dealing with this subject, if not a charitable regard for the feelings of others, at least a careful preparation and an exactness in the use of terms. The very Divine whose opinions Mr. *Bennett* seems to have sought to represent, was obliged himself to point out how erroneous was his statement of those opinions. The Respondent corrected the manifest error without an expression of regret at the pain he may have caused to many by his careless language. Even in their maturer form, his words are rash and ill-judged, and are perilously near a violation of the law. But the Committee have not allowed any feeling of disapproval to interfere with the real duty before them, to decide whether the language of the Respondent was so plainly repugnant to the Articles and Formularies as to call for judicial condemnation; and, as these proceedings are highly penal, to construe in his favour every reasonable doubt.

There will be no order as to costs, as the Respondent has not appeared.

APPENDIX.

NOTE A.

GORHAM v. *BISHOP OF EXETER.*

THE decision of the Gorham case set at rest the question as to the comprehensiveness of the Church in relation to the subject of Christian Baptism. It decided, that on a principal point in dispute between different theological schools, the Church of England maintains an absolute neutrality; and that there is nothing in the Baptismal offices to hinder the adherents of such schools from holding office together as members of an united Christian body. If the judgment of the Committee had been in favour of the Respondent, the highest Ecclesiastical Court in the realm would have contravened the position occupied by the Church from the earliest time in relation to the doctrine of the efficacy of Baptism; for it can be historically shown that the doctrine of an absolute regeneration of infants in Baptism has never been authoritatively regarded as essential. In that great monument of primitive antiquity, The Apostles' Creed, there occurs no mention of the Sacrament of Baptism, infant or adult. In the Athanasian Creed, which so elaborately formulates the chief doctrines of the Church, there is no allusion to Baptismal efficacy as an 'Article of Faith.' In the Nicene Creed there is a clause which acknowledges 'one Baptism for the remission of sins.' But this is a phrase borrowed from Scripture, which occurs in connection with but two subjects in the New Testament: the Baptism by John (Mark i. 4; Luke iii. 3), and the Baptism by St. Peter on the Day of Pentecost (Acts ii. 38), and if its Biblical signification is to govern its meaning in the Creed, it would appear that the context of those passages not only does not enjoin but almost forbids the inclusion within the words of the Baptism of infants, and even if it did, the question as to whether such Baptism or remission of sin is conditional or absolute would still be undetermined.

But if the Creeds do not assert the dogma, neither is there any authoritative statement of it in the Councils of the Church, if we except the first Canon of the Fourth Council of Carthage, which, in giving rules for the examination of one elected to be a Bishop, directs, amongst other things, as follows:—'Quærendum etiam ab eo, si in Baptismo omnia peccata, id est, tam originale contractum, quam illa quæ voluntariè admissa sunt dimittantur.' From this Canon it would appear that no one in the Primitive Church could possibly be ordained a Bishop without its being first ascertained that he 'believed original sin to be remitted in Baptism.'* There is, however, much reason to believe that the Canons of the Fourth Council of Carthage are from beginning to end a complete forgery; and even if they were genuine, there is nothing to support the assertion that they were adopted by the General Council of Chalcedon; and had they been so adopted, and thus 'have had the authority of the whole Catholic Church,' they contain, amongst other things, these two regulations:—'That no Bishop shall read a Gentile book;' that 'no Bishop, on pain of deprivation of the right of ordination, shall ever ordain a Clergyman who has been twice married, or who has married a widow.'†

It has been said that the question whether grace was conferred by the work wrought, the *opus operatum* was settled in the Church of Rome from the earliest period. But it would appear that there never was any authoritative assertion of the dogma anterior to the Council of Trent. The decrees of that Council which treat of Baptism, are the 6th, 7th, and 8th Canons passed in the 7th Session (1547). The 6th Canon is in these words:—'Si quis dixerit, Sacramenta novæ legis non continere gratiam quam significat, aut gratiam ipsam non ponentibus obicem non conferre, quasi signa tantum externa sint, acceptæ per fidem gratiæ, vel justitiæ, et notæ quædam Christianæ professionis, quibus apud homines discernuntur fideles ab infidelibus, anathema sit.' Thus the grace is held to be given to those 'non ponentibus obicem,' not interposing any obstacle. The 7th Canon is as follows:—'Si quis dixerit, non dari gratiam per hujusmodi Sacramenta semper, et omnibus, quantum est ex parte Dei, etiam si rite ea suscipiunt, sed aliquando, et aliquibus, anathema sit.' And this grace before said to be given to all persons not presenting an obex, is here said to be given always and to all. Then the 8th Canon is

* Letter of the Bishop of Exeter (Dr. Philpotts) to the Archbishop of Canterbury, p. 15.

† Essays on Church and State, by A. P. Stanley, D.D., Dean of Westminster, p. 29.

thus:—'Si quis dixerit, per ipsa novæ legis Sacramenta opere operato non conferri gratiam, sed solam fidem divinæ promissionis ad gratiam consequendam sufficere, anathema sit.' Here the doctrine that grace is conferred by the work wrought, and not by faith only, is declared and pronounced. Against this doctrine of the Church of Rome, the 26th of the Articles of the Church of England, sanctioned by the Convocation of 1552 is levelled. That Article is in these terms:—'Of the Sacraments.—Our Lord Jesus Christ gathered His people into a Society by Sacraments, very few in number, most easy to be kept, and of most excellent signification—that is to say, Baptism and the Supper of the Lord.' This was pointed against the Seven Sacraments, as declared by the Church of Rome. It goes on:—'The Sacraments were not ordained of Christ to be gazed upon, or to be carried about, but that we should duly use them. And in such only as worthily receive the same they have a wholesome effect or operation, not as some say, "Ex opere operato," which terms as they are strange and utterly unknown to Holy Scripture, so they do yield a sense which savoureth of little piety, but of much superstition; but they that receive them unworthily receive to themselves damnation. The Sacraments ordained by the Word of God be not only badges or tokens of Christian men's profession, but rather they be certain sure witnesses, effectual signs of grace and God's good will towards us, by the which He doth work invisibly in us, and doth not only quicken, but also strengthen and confirm our faith in Him.' In the corresponding Article of 1562, the 25th, the same doctrine is held though the language is transposed. In Bishop Burnet's view, its effect is to exclude the 'opus operatum' as formally as the Article of 1552 excluded it. He says:—'For the virtue of the Sacraments being put in the worthy receiving, excludes the doctrine of the "opus operatum," as formally as if it had been expressly condemned; and the naming of the two Sacraments instituted by Christ is upon the matter the rejecting of the rest.' (Burnet on Articles, page 314.)

It would appear from these considerations that the dogma of the unconditional regeneration of infants in Baptism has no authority in the ancient Creeds, or in the decrees of the General Councils of the Church; that up to the Council of Trent (1547) it had never been promulgated as an Article of Faith, while in the English Church it has always remained an open question; and this is the liberty which is vindicated for the Church by the ruling of the Judicial Committee in the Gorham case.

Note B.

LIDDELL v. *WESTERTON.*
LIDDELL v. *BEAL.*

(Statement of Faulkner *v.* Litchfield.)

LIDDELL *v.* WESTERTON and LIDDELL *v.* BEAL. Note B.

In the judgment pronounced by Lord Kingsdown in Liddell *v.* Westerton, and the associated case of Liddell *v.* Beal, frequent reference is made to the case of Faulkner *v.* Litchfield. That case is of such importance that it has been deemed advisable briefly to give the substance of it, and a few passages from the judgment of Sir H. Jenner Fust, the Dean of the Arches, by whom it was decided.

Faulkner *v.* Litchfield, or the stone altar case, was the first case in which the two great schools or parties in the Church came to a direct issue in the Courts of Law. In that case, Mr. Faulkner, the Vicar of the Parish of St. Sepulchre, in Cambridge (whose Church was then undergoing restoration), opposed the grant of a faculty or licence which was applied for by the Churchwardens, to authorise a stone Altar and a Credence Table. The cause was heard, in the first instance, before the Chancellor of the Diocese of Ely, assisted by an ecclesiastical advocate as assessor. The case is reported in the 'British Magazine' for August 1844, and judging from the statement of it in that journal, it would appear that the Vicar's argument received but little consideration. The ruling of the Chancellor's Court having confirmed the issuing of the Faculty, the Vicar appealed to the Arches Court of Canterbury, and after a learned argument, judgment was given on January 31, 1845. It resulted in the reversal of the decree of the Court below, and consequently the ratification of the stone Altar and the Credence Table was refused

The judgment, in opposition to the view that Ecclesiastical Rites generally practised in ancient times had, *per se*, a claim to be sanctioned and revived, declared, that such Rites cannot be justified by a simple regard to their antiquity, and without reference to their relation both to the letter and spirit of what took place at the Reformation. Further, it was in effect laid down, that the enactments and authorities of the 16th, and 17th centuries, have a more direct bearing on disputed questions of English Ritual than citations from ecclesiastical historians, or patristic writers, and the important principle was clearly enunciated that such authorities will be construed according to the received rules of legal exposition—rules which are the product of great acute-

ness, and wide experience in interpretation, and with which non-professional minds have little exact acquaintance.

The material parts of the judgment, which ran to great length, are as follows:—

'The question is one simply of the construction of the Rubric and Book of Common Prayer, which are incorporated into the Statute of Uniformity, 13 and 14 Car. II., and of the Canons which were passed in 1603, and of that number the 82nd, which more particularly applies to the subject. In proceeding to consider this subject, the Court must proceed precisely in the same manner as it would in construing other Acts of Parliament. The question is, whether this stone Communion Table is or is not a Communion Table within the meaning of the Rubric, and the Constitutions and Canons Ecclesiastical . . . . it is to be observed, with respect to the use of the word "Table" in the present Rubric, the term is to be construed according to its usual and proper meaning . . . . it is not unimportant to consider what was the structure, and what was required at the time at which these Tables, under the name of Altars, were used in the Romish Church, and also to see what changes have been made in the material, and in the mode of erecting these Altars. . . . . I think I may assume the fact, that at the time of the Reformation, this was the usual form of Altars in most Churches; they were certainly made of stone, they were fixed and immovable, and the generality of them were in the form of the tombs of the martyrs. Such was the description of Altar which was to be got rid of at this time, in order to remove as far as possible all those superstitious notions which attached to the performance of those Services in the Church of Rome which were connected with the doctrine of Transubstantiation, or the change in the Elements of the Lord's Supper. As that was one of the principal points upon which the Church of England separated from that of Rome, at the commencement of the Reformation alterations were made in the performance of the Service to a certain extent, but not to any great extent, at that time. The Mass continued to be performed during the time of Henry VIII., and also for the first two years of the reign of Edward VI. We find by his Prayer Book, set forth in 1549, the Service thus described:—"The Supper of the Lord and the Holy Communion, commonly called the Mass." The Second Book then went on to say:—"The Table having, at the Communion time, a fair white linen cloth upon it, shall stand in the body of the Church, or in the chancel, where Morning Prayer and Evening Prayer be appointed to be said;" and the directions, as it will presently appear, in the present Rubric are substantially the

LIDDELL v. WESTERTON and LIDDELL v. BEAL. Note B.

same. Again, in the Prayer Book of 1549, the Priest is directed to stand "humbly afore the midst of the Altar," and say the Lord's Prayer, &c. In that of 1552, the Priest is directed to stand "at the north side of the Table." Now the word "Altar" occurs in several other parts of the first Prayer Book; the Minister is said to set the bread and wine on the "Altar." After the Consecration Prayer, the Priest is still to turn to the "Altar," but without any Elevation or showing the Sacraments to the people. Again, on Wednesdays and Fridays, &c., the Priest shall say all things at the Altar. In the bread there is an alteration made, and it is a point to which the Court must advert—the bread is declared to be bread. There is some alteration in the form of the bread which was received by the people in the Sacrament. It was, according to the First Book, to be fashioned after the manner of "unleavened bread," "and round as it was afore;" but in the Second Prayer Book the direction runs thus:—"And to take away any superstition which any person hath or might have in the bread and wine, it shall suffice that the bread shall be such as is usual to be eaten at the table with other meats." Now here it does appear to me impossible to doubt what the meaning of the word Table was as used in the Second Prayer Book, in reference to the bread which is to be taken on this occasion, that it shall be such as is "eaten at table with other meats." Can the word "Table" mean anything but that table at which meals are usually eaten? The expression, bread usually "eaten with other meats," necessarily implies it. It was not to be such as was received before 1549, but it should be bread such as is commonly used at tables. It appears, therefore, to me, that these alterations throw a very important light upon the meaning of the word Table which is substituted for Altar in these several portions of the Prayer Book; and it is to be observed that the word "Altar" occurs nowhere in the Rubric of the Second Book of Prayer of Edward VI., although it is used as well as the word Table in that Book published in 1549.'

After commenting on *Ridley's* Injunctions (1550), directing 'Curates, etc., to erect and set up the Lord's Board after the form of an honest Table,' and the Orders in Council of November 19 (1550), sent to the Bishops, enjoining them 'to pluck down the Altars' and to set up instead Tables to serve for the ministration of the Blessed Communion, and upon the fact that these alterations were actually made throughout the kingdom in the year 1550, and from that time to the end of Edward VI.'s reign, the Communion was administered accordingly; and that on the accession of Elizabeth, there was a return to the administration

of the Sacrament, and the performance of the Rites and Ceremonies of the Church, as they stood at the end of the reign of Edward VI.—the learned Judge continued :—'It is to be observed, that the object in framing the Second Prayer Book (of Edward VI., 1552) was the removal of old superstitions; and when one of the modes of carrying that object into effect was to be the abolition of all Altars, and the substitution of Tables for those Altars, it must be that something more than a mere alteration of name was intended. It would not have satisfied the purpose for which the alteration was made merely to change the name of Altar into Table. The old superstitious notions would have adhered to the minds of the simple people, and would have continued so long as they saw the Altar, on which they had been used to consider a *real* sacrifice was offered. For these reasons I consider a substantial alteration of the structure was made.'

The learned Judge then referred to the Injunctions of Elizabeth (1559), which imply 'a most complete substitution of the Table for the Altar, and not only that the Table was to be so substituted, but also that it was a structure capable of being moved from time to time, and calculated to do away with all superstitious notions that belonged to the Popish Mass, one of which was, that it was essential that the Altar be immovable. The Altar was to be fixed; here the Table was to be substituted for the Altar, and moved from time to time when the Holy Communion was to be administered.' Further, the judgment shows in detail that these Injunctions were immediately acted upon, 'with the intention of removing anything of the nature of superstition which was supposed to attach to Altars, and that what was then done does not appear afterwards to have been undone.' The Canons of 1571, approved of by Convocation, fully accord with what had been previously done. In the Canon entitled, 'Æditui Ecclesiarum et alii selecti viri,' are these directions:—[Æditui] 'curabunt mensam ex asseribus junctam, quæ administrationi sacrosanctæ Communionis inserviet.' The 82nd Canon, of the Canons of 1604 which are now in force, is entitled, 'A decent Communion Table in every Church,' and runs thus:—'Whereas, we have no doubt but that in all Churches within the realm of England, convenient and decent Tables are provided and placed for the celebration of the Holy Communion, we appoint that the same Tables shall from time to time be kept and repaired in sufficient and seemly manner, and covered in time of Divine Service with a carpet of silk, or other decent stuff, thought meet by the Ordinary of the place, if any question be made of it, and with a fair linen cloth at the time of the ministration, as becometh that Table, and so

LIDDELL v. WESTERTON and LIDDELL v. BEAL. Note B.

stand saving when the Holy Communion is to be administered, at which time the same shall be placed in so good sort within the Church or chancel, as thereby the Minister may be more conveniently heard by the Communicants in his prayer and ministration, and the Communicants also more conveniently, and in more number, may communicate with the said Minister.' 'This, then,' the learned Judge continues, 'is precisely in accordance with what has been done in Elizabeth's reign. The 82nd Canon does not indeed express, as that of 1571 does, that the Table should be "ex asseribus juncta;" but is there any possible reason to be conceived or assigned why this should not be of the same material? That it should be a movable Table is necessarily implied, because it is to be placed in a different position if required at the time when the Communion Service is performed from that in which it is to stand when not in use.'

After reviewing the subject so far as it receives illustration in the history of the period of Charles I., and commenting on the letters of Dr. Williams, Bishop of Lincoln, and Lord Chancellor of England, the sum of which is carefully to distinguish a Table from an Altar, and various other treatises of that time, all agreeing that the understanding of all persons who were called to act on the Injunctions, was that the Table was no longer to remain immovably fixed, but that for the purpose of removing the superstition connected with the Popish Mass, it was to be movable as the occasion might require, the learned Judge proceeded to inquire whether any alteration was made affecting the subject in 1662, when the last review of the Book of Common Prayer took place. He says, continuing:—

'There is no intimation, that I can discover, leading to the supposition, that a different sense was intended to be applied to the word Table from that which I have hitherto considered to be the true meaning of the word. Moreover, "Table" is used throughout; "Altar" nowhere appears, except in one or two sentences in the Offertory, wherein the word Altar was necessarily retained as being the term used in those passages of Scripture whence the sentences were taken. Added to this, there is a declaration made after the last Rubric in the Communion Service, not to be found in the Prayer Book as revised in the reign of Elizabeth, respecting the meaning of the posture of kneeling prescribed in receiving the Holy Communion, which goes to subvert the notion that a real sacrifice is intended, and is consequently at variance with the proper meaning of "Altar."

'What is the notion that would present itself to any one's mind of the word "Table" taken abstractedly? Surely it would not

be that of the object now under consideration—a stone structure of amazing weight and dimensions, immovably fixed. It is undoubtedly possible, by an ingenious argument, to contend that the present erection is a Table; it may be so according to one definition given by Dr. Johnson—"a flat surface raised above the ground"—but that notion would not readily present itself to the mind; such is not the ordinary meaning of the word.

LIDDELL v. WESTERTON and LIDDELL v. BEAL. Note B.

'When I take into consideration, then, that there is nothing whatever, so far as I can see, in the Injunctions and Canons which I have reviewed, to lead me to the conclusion that the word "Table" in the Book of Common Prayer is to be understood in an unnatural sense, but much the other way, I must pronounce that the structure in question is not a Communion Table within the meaning of the Rubric.' (1 Robertson Reports, p. 184.)

[No reference is made to the rest of the judgment disallowing Credence Tables, as on that point the judgment was overruled in Liddell *v.* Westerton.]

NOTE C.

PARKER v. *LEACH.*

PARKER v. LEACH. Note C.

DECIDED in 1866 by the Judicial Committee of the Privy Council, on Appeal from the Chancery Court of York, contains some valuable *obiter dicta* on the question of Altars as distinguished from Tables. It was a cause of perturbation of a seat or pew, and was heard before Lord Westbury, Sir James W. Colvile, and Sir Edward V. Williams. In giving judgment (Nov. 20), Lord Westbury commented on the judgment of Dr. Lushington in the Arches Court, in the case of Turner *v.* Parishioners of Hanwell, in which words are attributed to Dr. Lushington which Lord Westbury said could hardly have been used by him; but if they were used, were *obiter dicta* not necessary for the case before him. 'He,' continued Lord Westbury, 'is reported to have said, "If the Altar has been taken down, there must be a reconstruction, as my jurisdiction depends entirely *ratione loci*." If the learned Judge used these words, it is quite clear he must have borrowed them from the equivalent expressions which are found in John de Burgh, or other writers previous to the Reformation, and intended to apply wholly to Roman Catholic Churches. In a Roman Catholic Church there is an Altar, or place where the Priest offers sacrifice. In a Protestant Church, there is no Altar in the

PARKER v. LEACH. Note C.

same sense, but there is a Communion Table, on which bread and wine are placed, that the parishioners may come round it to partake of the Sacrament—the Supper of our Lord.

'It is impossible to derive from language applicable to a Roman Catholic Altar a conclusion of law applicable to a Protestant Church, which conclusion cannot be drawn unless you hold the Communion Table to be in all respects equivalent to the Altar of a Roman Catholic Church.' (4 Moore's Privy Council Reports, New Series, page 180.)

NOTE D.

WILLIAMS v. *BISHOP OF SALISBURY.*

WILSON v. *FENDALL.*

'Essays and Reviews.'

WILLIAMS v. BISHOP OF SALISBURY and WILSON v. FENDALL. Note D.

'ESSAYS AND REVIEWS,' which resulted in the above suits, were published in the early spring of 1860. The book contained several essays. The subjects treated, and the authors' names, were as follows:—

1. *The Education of the World.* By Frederic Temple, D.D., Head Master of Rugby. (Bishop of Exeter, 1869.)
2. *Bunsen's Biblical Researches.* By Rowland Williams, D.D., Vicar of Broad Chalk, and Vice-Principal of Lampeter College.
3. *On the Study of the Evidences of Christianity.* By Baden Powell, F.R.S., Savilian Professor in the University of Oxford.
4. *Séances historiques de Génève.—The National Church.* By Henry B. Wilson, B.D., Vicar of Great Staughton, Hunts.
5. *On the Mosaic Cosmogony.* By C. W. Goodwin, M.A.
6. *Tendencies of Religious Thought in England,* 1688–1750. By Mark Pattison, B.D.
7. *On the Interpretation of Scripture.* By Benjamin Jowett, M.A., Regius Professor of Greek in the University of Oxford.

The object of the work, and the degree of responsibility of the writers, were thus stated in the Preface:—

'It will readily be understood that the authors of the ensuing Essays are responsible for their respective Articles only. They have written in entire independence of each other, and without concert or comparison.

'The volume, it is hoped, will be received as an attempt to illustrate the advantage derivable to the cause of moral and religious truth, from a free handling, in a becoming spirit, of subjects peculiarly liable to suffer by the repetition of conventional language, and from traditional methods of treatment.'

WILLIAMS v. BISHOP OF SALISBURY and WILSON v. FENDALL. Note D.

Attention was first called to the character of the work by an article in the 'Westminster Review' of October 1860, which was followed by an attack in the 'Quarterly' of January 1861. A letter, signed by all the Bishops in England and Ireland, and of unknown authorship, was then published disapproving of certain opinions imputed to the Essayists. Convocation met shortly afterwards, and in the Lower House a vote of thanks to the Upper House was carried, and a Committee was appointed to examine into the book. About this time, too, a memorial condemning, as inconsistent with the teaching of the Church, extracts from the work, and signed by 10,000 Clergy, was presented at Lambeth; and in the following June, a report was presented to the Lower House of Convocation, and a motion was introduced to the effect, that there were grounds for proceeding to a Synodical Judgment. The Upper House, however, postponed the consideration of the subject till after the decision of the Judicial Committee, it appearing that, in case of an Appeal in the pending suits, some of the members of the House might be called to serve as judges. That decision was pronounced in February, 1864. Acquitting the Essayists, it was followed by considerable restlessness and excitement. The statute for the endowment of the Greek Chair at Oxford, held by Mr. Jowett, was defeated. An Oxford Committee drew up a declaration contravening in substance the effect of the decision, and questioning its validity. This document, which obtained the signatures of 11,000 Clergymen, was as follows:—

'We, the undersigned Presbyters and Deacons in Holy Orders of the Church of England and Ireland, hold it to be our bounden duty to the Church, and to the souls of men, to declare our firm belief that the Church of England and Ireland, in common with the whole Catholic Church, maintains without reserve or qualification the inspiration and Divine authority of the whole Canonical Scriptures, as not only containing, but being, the Word of God and further teaches, in the Words of our Blessed Lord, that the "punishment" of the "cursed," equally with "the life" of the "righteous," is "everlasting."' The subject was also revived in the Convocation of the Province of Canterbury, where, notwithstanding considerable opposition on the part of eminent members of both Houses, Synodical Condemnation of the book was passed in the month of July 1864.

Note E.

MARTIN v. *MACKONOCHIE.*

Extract from Report of Royal Commissioners on Ritual as to the use of lighted candles and incense.

MARTIN v. MACKONOCHIE. Note E.

By the judgment of the Dean of the Arches in this case (March 28, 1868), the Respondent was monished to abstain from the use of incense during the celebration of the Eucharist, but the learned Judge omitted to pronounce that the Respondent had offended against the Law by having lighted candles on the Communion Table during the said celebration, when such candles were not wanted for the purpose of giving light.

Both these matters—the use of incense and lighted candles on the Communion Table—were, at the time of the Arches Judgment, under consideration of the Ritual Commissioners, and are dealt with in their second Report, signed April 30, 1868, with this distinction, that their consideration of the use of incense is not confined to its use during the administration of the Lord's Supper. The Report is to the following effect:—

'The use of lighted candles in celebrating the Holy Communion, when they are not needed for the purpose of giving light, and the use of incense in the public Services of the Church, are the matters connected with this branch of the subject to which our attention has mainly been directed.

'We have taken evidence, and have availed ourselves of the information furnished by the arguments in the recent suits before the Court of Arches of *Martin* v. *Mackonochie* and *Flamank* v. *Simpson*, both in respect of lights used at the celebration of the Holy Communion, and also in respect of the use of incense as part of the public Services of the Church.

'The use of lighted candles at the celebration of the Holy Communion, has been introduced into certain Churches within a period of about the last twenty-five years. It is true that there have been candlesticks with candles on the Lord's Table during a long period in many cathedral and collegiate churches and chapels, and also in the chapels of some colleges, and of some Royal and Episcopal residences; but the instances that have been adduced to prove that candles have been lighted as accessories to the Holy Communion, are few and much contested.

'With regard to Parish Churches, whatever evidences there may be as to candlesticks with candles being on the Lord's Table, no sufficient evidence has been adduced before us to prove that at any time during the last three centuries lighted candles have been

used in any of these Churches as accessories to the celebration of the Holy Communion until within about the last twenty-five years.

MARTIN v. MACKONOCHIE. Note E.

'The use of incense in the public Services of the Church during the present century is very recent, and the instances of its introduction are very rare; and so far as we have any evidence before us, it is at variance with the Church's usage for 300 years.

'Under these circumstances, we are of opinion that it is expedient to restrain in the public services of the Church all variations from established usage in respect of lighted candles, and of incense.'

The Report is signed, without reserve as to the result of the evidence, by twenty-three Commissioners. Six Commissioners declined to sign; but, with one exception, they did not thereby dissent from the conclusions stated above.

NOTE F.

MARTIN v. *MACKONOCHIE.*

Sumner *v.* Wix.

MARTIN v. MACKONOCHIE. Note F.

THE question of the lawfulness of lighted candles, and the use of incense, came before the Arches Court of *Canterbury* (Sir *R. J. Phillimore* presiding), on January 10, 1870, in a suit entitled, 'The Office of the Judge,' promoted by Bishop *Sumner* v. *Wix*. The case is interesting, as it extended the rulings of the Judicial Committee, in *Martin* v. *Mackonochie*, as to the unlawfulness of lighted candles, so as to include the case of lighted candles held one on each side of the Priest when reading the Gospel, such lighted candles not being required for the purpose of giving light. The material allegations contained in the Articles, and the substance of the evidence offered in support of them, appear fully in the judgment. Dr. *Deane*, Q.C., and Dr. *Tristram* appeared for the Promoter; Mr. *Charles* for the Defendant. Judgment was delivered, February 3, 1870, by Sir *R. Phillimore*, as follows:—

In this case, the office of the judge is promoted by the late Bishop of *Winchester* against the Rev. *Richard H. E. Wix*, Vicar of St. Michael and All Angels, *Swanmore, Isle of Wight.*

The case comes before this Court by Letters of Request from the Diocese of *Winchester*, and Bishop *Sumner*, having ceased to be Bishop of the See of *Winchester*, continues to be the promoter of the suit.

The Defendant is charged with the Ecclesiastical Offences of

MARTIN v. MACKONOCHIE. Note F.

adding to the Ceremonies and Rites prescribed by the Law to be used in Church, by the burning of lights and the use of incense.

The charges with respect to the burning of lights are contained in the following Articles:—

'3rd. That the said *Richard H. E. Wix*, in the Church of the said Perpetual Curacy or Vicarage of St. Michael and All Angels, on the following Sundays, February 7, March 28, April 18, and May 23, all in the year 1869, used lighted candles on the Communion Table in the said Church, or on a ledge or shelf immediately above the said Communion Table, the said ledge or shelf having the appearance of being affixed to, and of forming part of, the said Communion Table, during the celebration of the Holy Communion, at times when such lighted candles were not required for the purpose of giving light, and permitted and sanctioned such use of lighted candles.

'5th. That the said *Richard H. E. Wix*, in the said Church, on the following Sundays, March 28, April 18, and May 23, all in the year 1869, used lighted candles placed in candlesticks, standing on each side of the Communion Table, during the celebration of the Holy Communion, at times when such lighted candles were not required for the purpose of giving light, and permitted and sanctioned such use of lighted candles.

'7th. That the said *Richard H. E. Wix*, in the said Church, on Sunday, March 28, 1869, caused or permitted two lighted candles to be held, one on each side of the Priest, when reading the Gospel, such lighted candles not being then required for the purpose of giving light.'

I will deal with the last Article first, because it is admitted on behalf of the Promoter, that the practice therein complained of has been *de facto* discontinued by Mr. *Wix* since the service upon him of a monition by the Bishop, dated April 3, in last year, and before the commencement of this suit; at the same time Mr. Wix contends the practice is lawful, and the judgment of the Court is prayed by the Promoter thereupon.

I am of opinion that the practice charged in this Article is unlawful, as an addition to the Rites and Ceremonies prescribed by the Law. I am glad, therefore, that Mr. *Wix* obeyed the monition of his Ordinary, and must admonish him not to return to the use of this practice.

With respect to the charge contained in the 3rd Article, Mr. *Wix* offers the following defence in his responsive plea (3rd Article).

He says the charge against him 'is, in part, untruly pleaded, for he alleges that on the said days, in the said 3rd Article men-

tioned, the said lighted candles were not placed on the Communion Table, or on a ledge or shelf immediately above the same, as therein alleged, but upon a certain other Table, called a Retable, the said Retable standing distinct and separate from, and not forming, or appearing to form, part of, and not being affixed, or appearing to be affixed, to the said Communion Table;' and he denies that the use of such lighted candles is an unlawful addition to, or deviation from, the forms prescribed by the Law.

With respect to the charge in the 5th Article, the Defendant admits the fact to be true as stated, but makes a similar denial with respect to the Law.

The charges with respect to the unlawful use of incense are contained in the following Articles:—

'9th. That the said *Richard H. E. Wix*, in the said Church, on the following Sundays, February 7, March 28, April 18, and May 23, all in the year 1869, used incense for censing persons and things in and during the celebration of the Holy Communion, or as subsidiary thereto, and permitted and sanctioned such use of incense.'

The Defendant, in his responsive plea, denies that he on the days in the Article mentioned, used incense for censing persons and things in and during the celebration of the Holy Communion, or as subsidiary thereto, or permitted or sanctioned such use of, incense as in the said Article alleged. And the Defendant further says, that he used, and permitted and sanctioned the use of incense on the days in the said Article mentioned, not for censing persons or things, nor in or during the celebration of the Holy Communion, nor as subsidiary thereto, but for other and lawful purposes.

'11th. That the said *Richard H. E. Wix*, in the said Church, on the following Sundays—to wit,' on February 7, on March 28, on April 18, and on May 23, all in the year 1869, used incense during Divine Service, or as subsidiary thereto, and permitted and sanctioned such use of incense.'

As to this Article, the Defendant in his responsive plea (Art. 13) denies that he used or permitted or sanctioned the use of incense on the days in the said 13th Article mentioned, during Divine Service, or as subsidiary thereto, but he admits that he used incense in a proper and lawful manner on the said days.

'15th. That the said *Richard Hooker Edward Wix*, in the said Church, on the following Sundays—to wit, on February 7, on March 28, on April 18, and on May 23, all in the year 1869, ceremonially used incense, and permitted and sanctioned such ceremonial use of incense.'

MARTIN v. MACKONOCHIE. Note F.

As to this Article, the Defendant in his responsive plea (Art. 15) denies that he on the days in the said Article mentioned used incense ceremonially, or permitted or sanctioned such ceremonial use of incense.

It appears from the evidence that what is called the Retable is a separate and distinct piece of furniture from the Holy Table; that it is placed behind the Holy Table; and that the ledge or shelf of it, to use the words of the witness, 'appears like a mantel-piece' over the Holy Table; that on this Retable stood two large candles and twelve branch candles, and that on each side of the Holy Table there stood a large candlestick which rested on the ground. All these candles were lighted at the time and in the manner which I will now state. And I may remark, that the counsel for Mr. *Wix* admitted, very properly, that the evidence given by the witness Cooper was substantially correct, and did not cross-examine him. It appears from his evidence, that after the Third Collect for grace had been said, there was a Sermon; after which the remaining Prayers were said, concluding with the Apostolic Benediction. After this, the candles were lighted by a chorister; there was a procession by the Minister and choir then formed, and they went from the Church to the Vestry. After which, another procession came from the Vestry with censers and incense burning, went to the Holy Table, where the Priest stirred up the incense, and censed all the things on the Retable and Holy Table, while he himself was censed by a boy behind him. After which the censers and incense were carried by a boy into the Vestry, accompanied, it should seem, by one of the Priests, another Priest remaining at the Holy Table. After the Communion Service was over, the censers were again fetched from the Vestry; another procession was formed, and the lights were extinguished. There were no lighted candles on the Holy Table itself: there was no incense burning during the time of the celebration of the Eucharist. Between the close of the Morning Prayers and the beginning of the Communion Service, some of the congregation left the Church, and other persons came in, and a bell was rung to denote that the Communion Service had begun. These few facts which are proved in the case, are much relied upon by the counsel for Mr. *Wix*, as materially differing in the present case from that of *Martin* v. *Mackonochie*, so much so, as to make this case one of *primæ impressionis*.

It has been forcibly contended that the two judgments of *Martin* v. *Mackonochie* and *Liddell* v. *Westerton* are irreconcilable in principle, and that I ought to follow the doctrine laid down in the former and not in the latter case. If, indeed, the duty were

cast on me of demonstrating that the two decisions were in every respect harmonious as to the principle on which they proceeded, I might, perhaps, though I do not say that I should, find the task a difficult one to execute, more especially with respect to the weight apparently given to the Injunctions of Edw. VI. in *Liddell* v. *Westerton*, and their entire rejection in *Martin* v. *Mackonochie*, when they were relied upon for the purpose of showing that the burning of two candles to represent the true light of the world was illegal. But I am happy to think that no such duty is imposed upon me in the present case. The lights which were burnt in this case were not upon the Holy Table or 'High Altar,' and therefore are unaffected by the Injunctions; and the lighting and burning of them in the manner and the circumstances proved, appears to me to fall under the category of ceremonies. Nor are they, in the language of the Privy Council in *Martin* v. *Mackonochie* (p. 387), 'inert and unused,' but things actively employed as a part of a ceremony, and are therefore illegal according to my own decision in the same case. It is not necessary that I should pass any opinion upon the legality of these things, if they were decorations, and neither 'ornamenta' nor ceremonies. It will be remembered that the candles were lit and burning during the whole of the Communion Service.

Now with respect to the use of incense, the principal defence is that it was employed during an interval between two services, and neither belonged to, nor was subsidiary to, either. I cannot take this view of the state of facts which is proved by the evidence. I think the fair result of that evidence is, that incense was used in the interval between two services which would otherwise have immediately succeeded each other; almost the same congregation was present at both services, and in the interval between them. It is true that after the incense had been removed, a bell was rung to signify that the second service was about to begin; but looking at all the circumstances, I think it would be unreasonable and unjudicial not to conclude that the burning of the incense was intended to be subsidiary and preparatory to the celebration of the Holy Communion. I am bound, therefore, to pronounce that the use of the incense, as well as the lighting and burning of the candles, according to the facts admitted to be proved in this case, were illegal acts, and that Mr. *Wix* ought to have obeyed altogether, as he did partially, the monitions of his Ordinary, which are set forth in the Articles, and I must admonish him to abstain from such practices for the future, and I must condemn him in the costs of this suit.

Note G.

HEBBERT v. *PURCHAS.*

Eucharistic Vestments.

HEBBERT v. PURCHAS. Note G.

A FEW words of explanation as to the various ornaments referred to in the judgment, may be of use to such as have not been accustomed to attach much definite meaning to them.

1. The Albe, *Alba* (the white garment worn next the skin).—This Eucharistic vestment was a loose and long garment coming down to the feet, and having close-fitting sleeves reaching to the hands. Anciently it was usually made of linen, while in later times silks of different colours were used, sometimes ornamented with square or oblong pieces of embroidery called Apparels. The Rubric of 1549, by directing the use of a 'white Albe plain,' seems to discountenance the use of a highly ornamented vestment. A book called the 'Rationale' of ceremonies to be used in the Church, with an explanation of their meaning, published in 1541–42, says of the Minister, that 'he puts upon him the Albe, which, as touching the mystery, signifieth the white garment wherewith Herod clothed Christ in mockery when he sent him to Pilate. And as touching the Minister, it signifieth the pureness of conscience and innocency he ought to have, especially when he sings the Mass.'

2. The Chasuble, or Vestment (*Casula*, the little house, the Roman labourer's smock frock, which he put on when at work in bad weather; cf. coat, cotta, cottage).—This Eucharistic vesture was worn over the Albe; originally it was nearly or entirely a circular garment, having an opening in the centre through which the head of the wearer passed; it fell over the arms and shoulders, covering the entire person, and reaching nearly to the feet before and behind; at a later period it was made narrower at the back and front by reducing its circular form, and so it frequently terminated like a reversed pointed arch; the sleeve part also became shorter, reaching only to the hands, and thus avoiding the need of gathering it up on the arms. Ultimately the sleeve parts were cut away to the shoulder in the Latin Communion. It was ornamented by embroidering the collar and outer edge, and attaching to it what was called the Y Orphery; though commonly the Latin cross was variously embossed on the back, only the perpendicular Orphery (or Pillar, as it is called) being affixed to the front. The *Rationale*, in the book already referred to, is thus given:—'The Overvesture, or Chesible, as touching the mystery, signifieth the purple mantle that Pilate's soldiers put upon Christ after they

had scourged Him. And as touching the Minister, it signifies charity, a virtue excellent above all other.' HEBBERT v. PURCHAS. Note G.

3. The Cope, cappa (also called 'pluviale,' the waterproof), is a *full long* cloak, of a semicircular shape, reaching to the heels, and open in front, thus leaving the arms free below the elbows. Most commonly it has a hood, and is ornamented with embroidery. It was fastened by a Band, to which was attached an ornament called the Mosse. It was worn over either the Albe or Surplice.

4. The Tunicle, *Tunica* also called, as worn by the Deacon and Gospeller, Dalmatic, was a kind of loose coat or frock, reaching below the knees, open partially at the lower part of the sides; it had full, though not large, sleeves, and in material and colour corresponded with the Chasuble. It was ornamented with Orpherys and embroidery. (Annotated Book of Common Prayer, p. 587.)

NOTE H.

HEBBERT v. *PURCHAS.*

Report of Ritual Commissioners as to Vestments.

THE first Report of the Ritual Commissioners, dated August 19, 1867, dealt with the question of vestments, and is as follows:— HEBBERT v. PURCHAS. Note H.

'We, your Majesty's Commissioners, have, in accordance with the terms of your Majesty's Commission, directed our first attention to the question of the vestments worn by the Ministers of the said United Church at the time of their ministration, and especially to those the use of which has been lately introduced into certain Churches. We find that whilst these vestments are regarded by some witnesses as symbolical of doctrine, and by others as a distinctive vesture, whereby they desire to do honour to the Holy Communion as the highest act of Christian worship, they are by none regarded as essential, and they give grave offence to many. We are of opinion that it is expedient to restrain in the public Services of the United Church of England and Ireland all variations in respect of vesture from that which has long been the established usage of the said United Church.' (Signed by all the Commissioners.)

NOTE I.

HEBBERT v. *PURCHAS.*

Opinion of Counsel on the Vestment Question.

HEBBERT v. PURCHAS. Note I.

THE question of Eucharistic Vestments was carefully considered in 1866, on a case submitted by certain of the Bishops to the Attorney-General (Sir *R. Palmer*), Sir *H. M. Cairns*, Q.C. (now Lord *Cairns*), Mr. *Mellish*, Q.C. (now Lord Justice), and Mr. *F. Barrow*. The opinion of these eminent counsel is so valuable, that it has been thought desirable to furnish it at length.

After a very lengthy statement in the case of the historical aspect of the question, the following query was submitted:—

Query.—Suppose a clergyman of the Church of *England* to administer the Holy Communion in a Parish Church habited in the vestments prescribed by King *Edward* VI.'s first Prayer Book (1549), does he infringe the law, and commit an offence cognisable by any legal tribune?

Opinion.—We are of opinion that the question should be answered in the affirmative. A careful consideration of the language of the Act of Uniformity of 1662, and the Rubric of the Prayer Book, and a comparison of that language with the previous Rubrics and enactments applicable to the question, lead us to the conclusion that the intention of the Legislature was not to revive or restore the use of any ornaments which had become obsolete. The Statute of *Elizabeth*, as altered by the advertisements, had been recognised both by the Liturgy and Canons of *James* in 1604, and appears unquestionably to have been in force down to 1662; and since there is nothing in the Statute of that year (except so far as it establishes the Rubric) which touches the point, it is by the Rubric alone that the practice, which had been established by the advertisements, can have been altered or repealed. We do not think that the Rubric has, or was intended to have, this effect. On the contrary, it would seem to apply only to such ornaments of the Minister as are common at all times of his ministration, and to point to a retention of such as were then in use, rather than to a revival of such as had been displaced by the advertisements. This interpretation is supported by the universal practice which has prevailed from 1662 down to the present time, and which affords a 'contemporaneous exposition' of the Rubric, to which great

weight would be attached by every Court of Law in England.— Signed, *Roundell Palmer, H. M. Cairns, George Mellish, Francis Barrow.*

The grounds of the opinion given above, Sir *Roundell Palmer* states as follows:—

I. It is a clear principle of law, that in the exposition of the words of a law, or other written instrument, which has been received and acted upon in one consistent and uniform manner from the time of its enactment or execution, for a long subsequent period, that interpretation is to be preferred (supposing the words of the document in any way to admit of it) which is in accordance with the subsequent practice and usage, and not that which is contrary thereto. '*Contemporanea expositio fortissima est in lege*,' etc. And the application of this rule is most necessary, and the reasons for it most forcibly apply, when the subject-matter of the law is a thing of great public importance, and of constant daily, and notorious use.

II. It is also a principle of law, that a prior enactment or provision is not to be deemed to be repealed or altered, except by express words, or really necessary implication; and this rule applies most forcibly, when the effect of such repeal would be to revive some earlier law, which had itself been, on consideration of its effect, expressly and deliberately repealed or altered; and when the implication is derived from words occurring, not in the body of any statute, but in a subordinate and directory part of another document, confirmed by statute.

III. My opinion did not at all proceed upon the notion that the vestments, etc., of the first Prayer Book of *Edward* VI. had become abrogated by mere desuetude; but I considered that they had been made actually illegal by the exercise of the legislative power given to the Crown by the Statute 1 *Eliz.*, c. 2, sec. 25; that is, that the advertisements of 1565-6 were issued by the Royal Authority, and had the force of law under that Statute; and that, if this had not been the case, the Canons of 1604, to which both the King and the Metropolitan were parties, would be sufficient for the same purpose.

IV. It is clear that the Act of Uniformity of *Charles* II. did not repeal, but left in force, the Act of 1 *Eliz.*, c. 2, with everything which had been done under the authority of that Statute, except so far as the particular enactments of the Act of *Chas.* II. were at variance therewith. The use, therefore, of the very language of sec. 25 of the Act 1 *Eliz.*, c. 2, in what is (erroneously) called the Rubric prefixed to *Chas.* II.'s Prayer Book, is quite

HERBERT v. PURCHAS. Note I.

intelligible, if it was intended merely to leave the law as to vestments, etc., in the state in which it *then stood* under that section.

V. The words of the so-called 'Rubric' of 1662, when accurately weighed, do not seem to me to be intended, nor to be apt in themselves, to *restore* anything which at that date was not 'retained' and 'in use' in the Church of *England*. An enactment that certain things shall be '*retained*' and be '*in use*,' naturally implies that the former state of things is, so far, to be *continued*; not that a new state of things is to be then introduced, or (what amounts to the same thing) that an old state of things, long before prohibited by law, and also disused in practice, is, for the future, to be revived and brought into use again.

VI. It is to be noted that this so-called Rubric appears, on the face of it, to relate only to 'the order for Morning and Evening Prayer daily to be said and used throughout the year,' not expressly mentioning the Communion Office, nor any other special office. And the 'ornaments' of which it speaks are those 'of the Church and of the Ministers thereof, at all times of their ministration.' These words may, without any violence to their grammatical sense, mean either of two things:—(1) Ornaments which are always and in all ministrations to be equally and indifferently used (and which, therefore, would necessarily be used during the order for Morning and Evening Prayer, to which the 'Rubric' primarily, if not solely, relates); or, (2) Ornaments, some of which are to be used at some times, and others at other times, of the ministration of the Minister. Of these two senses the former appears to me to be the more natural and probable in such a 'Rubric;' if it be the correct one, then this 'Rubric' has no reference at all to any special Eucharistic vestments, etc., and fails to support any argument in their favour. And that this is the correct interpretation is, to my mind, strongly confirmed by two arguments. The first, that in the former notice for which this was substituted, though introduced by the title, 'The Order where Morning and Evening Prayer shall be used and said,' the words were, 'at the time of the Communion and at all other times of his ministration,' which words necessarily extended to ornaments which might be in use at the time of the Communion, though not at the time of Morning or Evening Prayer. The change (coinciding with the effect of the 58th Canon, which provided for the use of the Surplice by every Minister saying the Public Prayer, or 'ministering the Sacraments, or other Rites of the Church') omitted, certainly not without purpose, the express

reference to the time of Communion. The other argument is, that from date of this change, till the last few years, the authors of the change themselves, and the whole clergy of every grade, proved, by their uniform practice, that they so intended and understood it.—Signed, *R. P.* (First Report of Royal Commission on Ritual, pp. 138, 139, 140.)

HEBBERT v. PURCHAS. Note I.

NOTE K.

SHEPPARD v. *BENNETT.*

THE judgment of the Judicial Committee in the case of Mr. Bennett takes rank with the other two great judgments of the Court—the judgment in the case of 'Essays and Reviews,' and the judgment in the case of Mr. Gorham. As by the judgment in the case of Mr. Gorham the legal position of the so-called Evangelical School was established, and as the judgment in 'Essays and Reviews' established the legal position of the school which has always claimed the right of free enquiry, so the judgment in the case of Mr. Bennett has included within the limits of the National Church the Sacerdotal party, and accorded to it, yet with a caution, the same latitude in the expression of opinion, that in former years was granted to the other schools of thought within the bounds of the Establishment. The three cases alluded to were all cases involving questions of doctrine. They have had this feature also in common, that they have resulted in the acquittal of the accused. Yet the circumstances under which those acquittals were pronounced are so different *inter se*, that they demand a passing observation. In the case of Mr. Gorham, the doctrinal statements of the Defendant, which were impugned by the Bishop of Exeter, were not only allowed by the Court, but in a great measure justified. In the case of 'Essays and Reviews,' it was decided that the Church had made no formal statement of the doctrines alleged by the promoters of the suits to be repugnant to the Articles and Formularies of the Church of England; whereas in the case of Mr. Bennett the Committee comment in terms of harshness on the doctrinal statements put forward by the reverend Respondent. Unwilling, however, to restrict the latitude allowed by the Church in matters of opinion, and the charge being made in a highly penal proceeding, the Committee gave the accused the benefit of the doubt that was entertained by the majority and dismissed the appeal.

SHEPPARD v. BENNETT. Note K.

SHEPPARD v. BENNETT. Note K.

The most remarkable feature of the Bennett judgment is its unexampled severity. 'Careless language'—'crude and rash expressions'—'words rash, and ill-judged, and perilously near a violation of the law'—such are the terms in which Mr. Bennett's shielded statements of the doctrine of the Lord's Supper are assailed. His statement of 'the presence,' in his 2nd edition of 'A Plea for Toleration,' is 'careless' and mischievous. When corrected under the advice of the Rev. E. B. Pusey, it is characterised as 'rash, ill-judged, and perilously near a violation of the law.' It is asserted repeatedly by the Court that the Articles and Formularies give no colour or sanction to the Sacramental doctrines taught by the Respondent. All that is decided in his favour amounts to no more than this: that the dogmatic statements which he makes, when charitably viewed and taken *in mitiori sensu*, are not so plainly repugnant to, or irreconcilable with the teaching of the Church, as to justify the Court in visiting him with punishment.

To many persons, the expressions substituted in the 3rd edition of 'A Plea for Toleration,' will seem to be a mere evasion of the more direct language used by Mr. Bennett in his 2nd edition, and unhesitatingly condemned by the Court. But if Dr. Pusey is the real Respondent, having supplied the form of words against which the prosecution was directed, it is not without its own instructive lesson to remember what was said by him at the meeting of the Church Congress in 1864. Commenting on the recent decision in 'Essays and Reviews,' he said, 'No lasting evil arises from the wrong acquittal of an individual, so long as the standard itself by which right and wrong, truth and falsehood, are measured, is not made crooked. For such is our English love of truth, that if any one should escape condemnation, simply because he had stated his false belief evasively, no human talent would ever restore his influence.' . . . 'Churchmen claim for themselves only the self-same liberty, which is afforded to Dissenters, to make clear the undoubted meaning of our Formularies, in any case in which their meaning shall be morally certain, yet may not be so expressed as to render it imperative on the legal mind (which thinks it right to give the accused the benefit of any possible way of escape) to pronounce the offender guilty.'

There is no recession in this judgment from the conclusions arrived at by the Committee in the previous suits of Westerton *v.* Liddell, Martin *v.* Mackonochie, and Hebbert *v.* Purchas. If Mr. Bennett had been charged with any outward act of adoration, he would have been liable to the same condemnation as Mr. Macko-

nochie. The Committee draw a distinction between the observance of outward ritual in the public service and the publication of private opinion on the part of the Priest—between the authorised doctrine for which the Church is responsible and the opinion of the individual, for which he alone is responsible. The former is the common property of the whole congregation, and all are expected to share in it. The latter no one need accept any further than he pleases. Mr. Bennett may therefore continue to assert his opinions with the same freedom as the truth of them is denied by members of the same Church, but he must not use the ritual or ceremonies of the Church as instruments for inculcating his opinions. For the law, though unequal to a contest with the subtle and incomprehensible refinements of theological doctrine, is competent to deal with overt acts, about which there can be no mistake. Sacerdotalism, repudiated again and again by the Court, is not the teaching of the Church, but a private view tolerated within it. It asserts its claims among a crowd of teachers, who openly deny it and condemn it. It is, like the doctrine of the non-eternity of future punishment, among the permitted theories of the clerical function.

With reference to the ornaments of the Church, and of the Ministers thereof in relation to the administration of the Lord's Supper, the following summarised statement of points ruled by the Court may prove useful:—

The Church of England has no altar of sacrifice (pp. 69–73, 238, 255, 256, 257). The Lord's Table must be of wood and movable (pp. 73, 253–257). A stone altar is illegal (pp. 73, 257). A cross attached to the Lord's Table is illegal (p. 73). Lighted candles on the Lord's Table during the celebration of the Lord's Supper, when not wanted for the purposes of light, are unlawful (pp. 122–129). The use of incense during the administration of the Holy Communion is unlawful (p. 108). The use of embroidered linen and lace on the Holy Table during the administration of the Holy Communion is unlawful (p. 76). The mixed chalice is unlawful (pp. 108, 185–187). Wafer bread is illegal (pp. 187–191).

The use of the Chasuble, Albe, and Tunicle while officiating in the ordinance of the Lord's Supper is illegal (p. 184).

The following points in connection with the Rubrics governing the administration of the Lord's Supper have been ruled:—

The celebrating Priest, during the Prayer of Consecration, must

SHEPPARD v. BENNETT. Note K.

stand and not kneel, or prostrate himself, before the Consecrated Elements (pp. 118, 122); bowing with the knee is kneeling and unlawful (pp. 142–146); bowing the head down towards the Table, and remaining some seconds in that position, is prostration, and unlawful (pp. 156, 158).

The north side of the Table, where the chancel faces the east, is the proper place for the celebrating Priest during the Communion Service, and also during the Prayer of Consecration (pp. 191–196). To stand at the north end of the west side, or with back to the people, is unlawful (pp. 193—198).

To elevate the cup, paten, or bread more than is necessary to take it into the hand of the Priest during the administration of the Holy Communion is unlawful (p. 140, 157).

The following points in relation to the doctrine of the Church on the Lord's Supper have been ruled:—

The Church of England has no sacrificial altar (p. 238), nor any propitiatory offering on the Lord's Table (p. 239). To teach that the sacrifice, or offering, of Christ can be repeated is illegal (p. 239).

The Church of England does not affirm any presence in the Lord's Supper except a presence to the soul of the faithful receiver (p. 234). To adore the Consecrated Elements is illegal (p. 242).

INDEX.

ADORATION:
of elements not charged against Mr. Mackonochie, 120.
as held and taught by Mr. Bennett, 216, 220.
if paid to the Consecrated Elements, is unlawful, 243.
or to any corporal presence of Christ therein, 242.

ADVERTISEMENTS (of Elizabeth, 1564):
provide for the vesture of the Minister, 169.
are of legal obligation, 171, 176.
view of the Dean of Arches as to, 177.
rejected by Judicial Committee, 177.
(*See* 'INJUNCTIONS, PROCLAMATION.')

ALBE:
(*See* 'VESTMENTS.')

ALTAR:
at St. Paul's and St. Barnabas', 46–48.
difference essential between Communion Table and, 66, 126.
nature of Roman Catholic, 67, 193.
in 1552, called Lord's Table, 69.
Ridley's and the King's injunctions as to (1550), 70, 71.
is a word not known to the Prayer Book, 72.
of stone, as erected at St. Barnabas', illegal, 72.
a term used habitually by Mr. Bennett, 214–223.
of sacrifice unknown in the Church of England, 238.
judgment of Sir H. J. Fust as to, 252.
(*See* 'COMMUNION TABLE.')

APPEAL:
history of Court of, *vide* 'INTRODUCTION'
to Upper House of Convocation, 38.
no rehearing of, 200.

ARTICLES OF RELIGION:
to be interpreted by the established rules of construction of written instruments, 22, 95.
the final result of discussion, 23, 246.
they do not decide all questions, 24.
of 1536 and 1562 distinguished, 27, 28.
baptismal points left open by, 28.
they are the code of faith, 29.
of 1562 distinguish the Lord's Supper from the Mass, 69.
the 11th has no mention of any transfer of merit, 98.
they do not use the word 'inspiration,' 99.
right of Church to ordain ceremonies asserted by, 159.
bearing of the 42nd of 1552 on the question of eternal punishment, 101.
bearing of, on question of real presence, etc., 233–235.
bearing of, on question of a sacrificial altar, 238.
bearing of, on question of adoration, 240–243.

ARTICLES OF CHARGE:
must distinctly state opinions impugned, and doctrines controverted, 94.
the accused is confined to the charges in, 94.

ARTICLES OF VISITATION:
of Edward VI. as to images, 58.
of Elizabeth as to the same, and vestments, 64, 170.
from time of Charles II., as to 'bread,' 190.
as to position of celebrating Priest, 194.
(*See* 'INJUNCTION,' 'PROCLAMATION,' 'ADVERTISEMENT.')

'AUTHORITY OF PARLIAMENT:'
in Ornaments Rubric applies to 2 and 3 Edward VI., c. 1, 54, 127, 128, 168, 184.

BAPTISM:
Mr. Gorham's doctrine of sacrament of, 4–14, 22.
as distinguished by Dean of Arches, 16.
variety of opinion as to sacrament of, 23, 26, 28.
consideration of forms of public and private, 31, 32.
opinions of English Divines not distinguishable from those of Mr. Gorham, 35–37.
decision of Privy Council as to Mr. Gorham's doctrine of sacrament of, 38.
note on unconditional regeneration in, 249.

'BEFORE THE PEOPLE:'
rubrical meaning of, considered, 195.

'BEFORE THE TABLE:'
rubrical meaning of, considered, 195–197.

BIBLE:
(*See* 'INSPIRATION.')

BIRETTA:
ruling as to lawfulness of, 184.

BLACK RUBRIC:
(*See* 'DECLARATION OF KNEELING.')

BOOK OF COMMON PRAYER:
tripartite nature of, 29.
devotional exercises in, are not evidence of doctrine, 29.
expressions in services of, must be construed charitably, 34.
private judgment may be exercised on points undetermined by, 34.
principle to be applied in dealing with alterations in, 231.

BREAD:
(*See* 'ELEVATION,' 'WAFER BREAD.')

CANDLES:
(*See* 'LIGHTED CANDLES.')

CANONS:
of Henry VIII., validity of, 54, 127.
82nd of 1604, as to Communion Table, 71, 73, 79, 255.
of 1571, as to Lord's Table, 73, 255.
of 1604 provide for vesture of Minister, 173, 176.
of 1604, their bearing on the vestment question when read with Prayer Book, 179, 181.
20th of 1604, as to description of bread, 190.

CHASUBLE:
(*See* 'VESTMENTS.')

CATECHISM:
bearing of, on baptismal question, 33.
bearing of, on the Lord's Supper, 234.

COMMANDMENTS (Ten):
ordered to be set up at east end of church, 49.
set up on a screen held to be a compliance with the order, 80.

COMMON PRAYER:
(*See* 'BOOK OF COMMON PRAYER.')

COMMUNION TABLE:
the structure at St. Barnabas' not a, 72.
referred to in Canons of 1571 and 1604, 73.
embroidered cloths on, 75.
embroidered linen and lace on, not lawful, 76.
distinction between altar and, essential, 66, 126.
decision as to lighted candles on, 122–129.
Rubric as to position of, considered, 192.
construction of 'north side of,' 193.
judgment in Faulkner *v.* Litchfield as to, 252.
text of 82nd Canon as to, 255.
(*See* 'ALTAR,' 'ELEVATION,' 'PROSTRATION.')

CONSTITUTIONS OF CLARENDON:
brief account of. (*See* 'INTRODUCTION.')

CONSTITUTIONS OF OXFORD (1322):
are repealed by Acts of Uniformity, 127.

COPE:
directed to be worn by Canons of 1604, 173, 179.
a legal vestment, 183.
(*See* 'VESTMENTS.')

CORPORAL (Presence):
is not an equivalent for 'real and essential,' 237.

CREDENCE TABLE:
at St. Paul's and St. Barnabas', 43.
disallowed by Dr. Lushington, 44.
allowed by Privy Council, 74, 75.

CROSSES:
at St. Paul's and St. Barnabas', 43, 46–48.
viewed as decorations, 55.
difference between images and, 56.
ceremony of creeping to, 59.
opinions of reformers as to, 64.
legal as architectural ornaments, 65.
attached to Lord's Table are unlawful, 73.

CUP:
(*See* 'ELEVATION,' 'MIXED CHALICE.')

DALMATIC:
(*See* 'VESTMENTS.')

'DECLARATION OF KNEELING:'
referred to, 120, 145, 236–238, 242.

DEVOTIONAL EXERCISES
are not as of course evidence of doctrine, 29.
absolute expressions in, must be received with qualification, 30.

DIVINES:
their opinions do not bind the Court, 23, 35.
but are only evidence of liberty, 36, 37, 246.
arguments based on quotations from, fallacious, 244
if living, do not rank as authorities, 245.

ELEVATION (of Paten and Cup):
ruling of the Dean of Arches as to, 108.
motion to enforce obedience as to, 132–135.
the monition to be interpreted by the Articles of Charge, 138.
which deals only with one particular mode of, 139.
but no sanction of, by Committee, 140.
further motion in respect of, 151.
judgment in respect of, 156–158.
practised by Mr. Bennett, 241.

EMBROIDERED CLOTHS:
at St. Paul's and St. Barnabas', 43.
disallowed by Dr. Lushington, 44.
allowed by Privy Council, 75.

EMBROIDERED LINEN AND LACE (during Holy Communion):
at St. Paul's and St. Barnabas', 43.
disallowed by Dr. Lushington, 44.
and by Privy Council, 76.

'ESSAYS AND REVIEWS:'
(APPENDIX, Note D.)

ETERNAL PUNISHMENT:
Mr. Wilson's views as to, 100.
bearing on the subject of, of 42nd Article, 101.
opinion of the Court, 102.

FAULKNER *v.* LITCHFIELD:
referred to by Lord Kingsdown, 72.
statement of, in APPENDIX, 252.

HOLY SCRIPTURE:
(*See* 'INSPIRATION.')

HOLY WATER:
charge as to, not proven, 185.

INCENSE:
the use of, during Holy Communion unlawful, 108.
but used by Mr. Bennett, 216.
its use preparatory to the Holy Communion illegal (APPENDIX, Note F).

INJUNCTIONS:
of Edward VI. (1547), 56, 111, 126.
of Queen Elizabeth, 64, 71, 169, 192.
Bishop Ridley's, 70.
King Edward's, of 1550, 70.
of 1547 do not warrant lighted candles, 126.
of 1547 are not referred to in the Ornaments Rubric, 128, 184.

INSPIRATION (of Holy Scripture):
Dr. Williams' views of, 96.
opinion of the Court thereon, 97.
views of Mr. Wilson as to, 98.
and opinion of the Court, 99.

JUSTIFICATION:
views of Dr. Williams as to, 97.
statements of 11th Article reviewed, 97.
opinion of the Court, 98.

'KING'S PROCTOR *v.* STONE:'
referred to, 231.

KNEELING:
(*See* 'PROSTRATION.')

LIGHTED CANDLES (on Communion Table):
allowed by judgment of Dr. Phillimore, 108.
judgment on appeal as to, 122–129.
if a ceremony they are abolished, 125.
not ornaments within the Rubric, 127.

LIGHTED CANDLES—*continued*:
motion to enforce monition as to, 132
Mr. Mackonochie's practice as to, 133.
during reading of Gospel. (APPENDIX, Note F.)

LORD'S TABLE:
(*See* 'COMMUNION TABLE.')

MACDOUGALL *v.* PURRIER:
referred to by Lord Hatherley, 176.

MASS:
a term used in first Prayer Book, 68.
struck out in second, 69, 72.
Articles of 1562 distinguish Lord's Supper from, 69.
and so do Bishop Ridley's injunctions, 70.
disappearance of vestments used in, 170.

MIXED CHALICE:
mixing water with wine during administration illegal, 108.
but if the mixing be not made at time of celebration, held by Dean of Arches to be legal, 185.
this decision overruled, 185–187.

NORTH SIDE OF TABLE:
is that side which looks to the north, 193–195.
the proper position of the Priest during the Consecration Prayer is at the, 196.

ORNAMENTS:
meaning of generally, 51.
meaning of, in 'Ornaments Rubric,' 55.
lighted candles viewed as, 127–129.

ORNAMENTS RUBRIC:
construction of, 51, 127, 128.
history of, reviewed, 167–174.

PARKER *v.* LEACH:
referred to by Lord Cairns, 126.
statement of, in APPENDIX, Note C.

PATEN:
(*See* 'ELEVATION.')

POSITION (of consecrating Priest):
judgment as to, 191–198.

PREMUNIRE (Statutes of):
brief account of. (*See* 'INTRODUCTION.')

PRESENCE (of Christ in the Eucharist):
Dr. Pusey's views as to, 213, 214.
Mr. Bennett's, 215–221, 232.
the Church of England does not affirm, or require any, except to the soul of the faithful receiver, 234.
alteration of Black Rubric as touching the, 236.
'Corporal' is not an equivalent for 'real and essential,' 237.

PROCLAMATION:
first of Edward VI., 59.
second of Edward VI., 60.
third of Edward VI., 61.

PROSTRATION (before the Consecrated Elements):
held by Dean of Arches to be a question for the Ordinary, 109.
but by Judicial Committee to be a question for the Court, 122.
during Prayer of Consecration the Priest is to stand, and not to kneel, 118.
motion to enforce obedience to monition as to, 132.
bowing the knee is a, 142, 147.
as is also bowing towards the Table, and so remaining for some seconds, 159.
(*See* 'ADORATION.')

PROVISORS (Statutes of):
brief account of. (*See* 'INTRODUCTION.')

QUEEN'S BENCH:
judgment in, on motion to send appeal to Convocation, 39.

REAL PRESENCE:
(*See* 'PRESENCE.')

RETABLE:
obiter dicta as to propriety of, 79.

RITUAL COMMISSIONERS:
Report of, as to Lights (APPENDIX, Note E).
Report of, as to Vestments (APPENDIX, Note H).

SACRIFICE (in the Holy Communion):
opinions of Mr. Bennett as to, 232.
is not an efficacious offering, 239.
Bishop Bull's use of the phrase, 239.
(*See* 'ALTAR.')

STANDING WITH BACK TO PEOPLE:
is a disobedience of the Rubric, 196.
not ruled on in Martin *v.* Mackonochie, where the question was as to posture, 197.

STATUTE OF UNIFORMITY:
object of, 119, 144.

'SUFFICE' (It shall):
construction of, 189.

SUMNER *v.* WIX:
statement of, in APPENDIX, Note F.

SUPREMACY (of Crown in ecclesiastical matters):
history of, *vide* 'INTRODUCTION.'

SURPLICE:
ordered by advertisements of 1564, 169.
reluctance of Puritan party to accept, 170, 173.
the only vestment prescribed by advertisement, 178.
the proper vestment for the Clergy, 183.

TUNICLE:
(*See* 'VESTMENTS.')

VESTMENTS (Chasuble, Albe, Tunicle, Dalmatic):
described, APPENDIX, Note G.
worn or sanctioned by Mr. Purchas, 167.
ordered by advertisements of 1564, 169.
disappearance of, used in the Mass, 170.
obnoxious to Puritan party abolished, 171.
no attempt to revive them between 1604 and 1661, 173.
'Ornaments Rubric' reviewed, 174.
force of 'at all times of their ministration,' 174, 175.
not used since last Act of Uniformity, 175.
the Dean of Arches' view that the ornaments of Edward's first Book are prescribed by Rubric of 1662 overruled, 177.

VESTMENTS—*continued*:
Dr. Lushington's view that the Act of 1662 was a repealing Act untenable, 180.
Dr. Phillimore's view of a maximum and minimum untenable, 182.
the Canons of 1603 must be construed with the Rubric of 1662, 182.
usage helps a correct interpretation, 183.
disallowed by Privy Council, 184.
report of Ritual Commissioners as to, APPENDIX, Note H.
opinion of Sir R. Palmer, etc., as to, APPENDIX, Note I.

VISITATION ARTICLES:
(*See* 'ARTICLES OF VISITATION.')

WAFER BREAD:
judgment as to lawfulness of, 187–191.

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